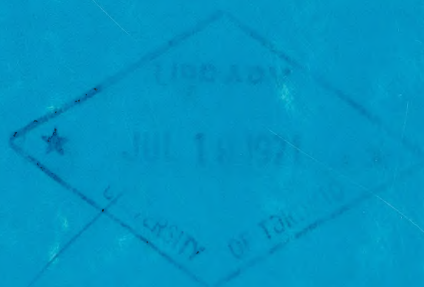


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Proposals for a New Business Corporations Law for Canada



Volume II





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[G-3] Proposals for a new
business corporations law for
Canada. Vol. II. Draft Canada
business corporations act.

by
Robert W. V. Dickson
John L Howard
Leon Getz

1971

**Proposals
for a
New Business Corporations Law
for Canada**

**VOLUME II
Draft Canada Business Corporations Act**

by

ROBERT W. V. DICKERSON, B. Com., LL.B., Ph.D., C.A.
of the British Columbia Bar

JOHN L. HOWARD, B. Com., LL.B., LL.M.
of the British Columbia and Quebec Bars

LEON GETZ, B.A., LL.B., LL.M., LL.M.
of the South Africa Bar

French Translation Supervised by

ROBERT J. BERTRAND, B.A., LL.L., M.A. (Econ.), M.Sc. (Econ.), LL.M., LL.M.
of the Quebec Bar

References under the marginal notes are to paragraphs in the Commentary (Volume I).

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Price subject to change without notice

Information Canada
Ottawa, 1971

DRAFT CANADA BUSINESS CORPORATIONS ACT

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PART 1.00

Interpretation and Application

| | | |
|-----------------------|-------------|--|
| Short title | 1.01 | This Act may be cited as the Canada Business Corporations Act. |
| ¶ 44 | 1.02 | |
| Interpretation | (1) | In this Act, the regulations and any certificate or other document issued by the Registrar under this Act, |
| ¶ 45 | | |
| “affiliate” | (a) | “affiliate” means an affiliated body corporate within the meaning of subsection (2); |
| “articles” | (b) | “articles” means the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of dissolution, and includes any amendments thereto; |
| “associate” | (c) | “associate” when used to indicate a relationship with any person means <ul style="list-style-type: none"> (i) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or securities convertible into shares carrying more than 10 per cent of the voting rights under all circumstances or by reason of the occurrence of a contingency that has occurred and is continuing, or an option or right to purchase such shares or such convertible securities, (ii) a partner of that person acting on behalf of the partnership of which they are partners, and (iii) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity, (iv) a spouse, son or daughter of that person, or (v) a relative of that person or of his spouse if that relative has the same home as that person; |
| “auditor” | (d) | “auditor” includes a partnership of auditors; |
| “beneficial interest” | (e) | “beneficial interest” or “beneficial ownership” includes ownership through a trustee, legal representative, agent or other intermediary; |
| “body corporate” | (f) | “body corporate” includes a corporation, company or other body corporate wherever or however incorporated; |
| “call” | (g) | “call” means an option transferable by delivery to demand delivery of a specified number or amount of securities at a fixed price within a specified time but does not include an option or right to purchase securities of the corporation that granted the option or right to purchase; |

- (h) “corporation” means a body corporate incorporated or continued under this Act and not discontinued under this Act; “corporation”
- (i) “court” means “court”
 - (i) the Trial Division of the Federal Court of Canada, and
 - (ii) the superior court of original jurisdiction or the trial division of the superior court of original jurisdiction in each of the provinces and territories of Canada, respectively;
- (j) “court of appeal” means the court to which an appeal lies from an order of a court; “court of appeal”
- (k) “debt obligation” means a bond, debenture, note or other security evidencing a debt of a corporation, whether secured or unsecured; “debt obligation”
- (l) “director” includes a person occupying the position of director by whatever name called and “directors” and “board of directors” includes a single director; “director”
- (m) “incorporator” means a person who signs articles of incorporation; “incorporator”
- (n) “Minister” means the Minister of Consumer and Corporate Affairs; “Minister”
- (o) “ordinary resolution” means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution; “ordinary resolution”
- (p) “person” means an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative; “person”
- (q) “put” means an option transferable by delivery to deliver a specified number or amount of securities at a fixed price within a specified time; “put”
- (r) “redeemable share” means a share issued by a corporation “redeemable share”
 - (i) that the corporation may purchase or redeem upon the demand of the corporation, or
 - (ii) that the corporation is required by its articles to purchase or redeem at a specified time or upon the demand of a shareholder;
- (s) “Registrar” means the Registrar appointed under section 20.08; “Registrar”
- (t) “regulations” means the regulations made under this Act; “regulations”

| | |
|-----------------------------------|--|
| "security" | (u) "security", means a certificate evidencing a share of any class or series of shares or a debt obligation of a corporation; |
| "security interest" | (v) "security interest" means an interest in or charge upon the property of a corporation by way of mortgage, hypothec, pledge or otherwise, taken by a creditor to secure payment of a debt of the corporation; |
| "series" | (w) "series" of shares means a subdivision of a class of shares; |
| "special resolution" | (x) "special resolution" means a resolution passed by a majority of not less than $\frac{2}{3}$ of the votes cast by the shareholders who voted in respect of that resolution. |
| Affiliated corporations | (2) For the purposes of this Act, <ul style="list-style-type: none"> (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person, and (b) if two bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other. |
| Deemed control | (3) For the purposes of this Act, a body corporate is deemed to be controlled by a person if shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are held, other than by way of security only, by or on behalf of that person. |
| Potential control | (4) For the purposes of subsection (3), a person with an option, conversion privilege or right, either immediately or in the future, and either absolutely or contingently, to or to acquire shares of a body corporate, or to control the voting rights of shares of a body corporate is deemed to have the same position in relation to the control of the body corporate as if he owned the shares, unless the right is not exercisable until after the death of that person. |
| Holding body corporate | (5) A body corporate is the holding body corporate of another if that other body corporate is its subsidiary. |
| Subsidiary body corporate | (6) A body corporate is a subsidiary of another body corporate if it is controlled directly or indirectly by that other body corporate. |
| Deemed distribution to the public | (7) For the purposes of this Act, securities of a corporation <ul style="list-style-type: none"> (a) issued upon a conversion of other securities, or (b) issued in exchange for other securities are deemed to be securities which are part of a distribution to the public if those other securities were part of a distribution to the public. |

1.03

- | | |
|--|--|
| (1) Notwithstanding any other Act of the Parliament of Canada, a body corporate, except a body corporate without share capital, that might be incorporated under an Act of the Parliament of Canada shall be incorporated under this Act. | No incorporation under other Act ¶ 46, 47 |
| (2) Unless otherwise provided for the purposes of a Part of this Act, this Act applies to (a) every corporation incorporated under this Act, and (b) every body corporate continued as a corporation under this Act, that has not been discontinued under this Act. | Application of Act |

PART 2.00
Incorporation

2.01

Incorporators

¶ 48, 49

One or more individuals no one of whom

- (a) is less than 21 years of age,
- (b) has been found by a court in Canada or elsewhere to be of unsound mind, or
- (c) is an undischarged bankrupt,

or any body or bodies corporate may incorporate a corporation by signing articles of incorporation and complying with section 2.03.

2.02

Articles of incorporation

¶ 53, 54

(1) Articles of incorporation shall follow the prescribed form and shall set out:

- (a) The proposed name of the corporation;
- (b) The place within Canada where the registered office of the corporation is to be situated;
- (c) The classes and any maximum number of shares which the corporation is authorized to issue, and
 - (i) if there are two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares,
 - (ii) if a class of shares may be issued in one or more series, the authority given to the directors to fix the number of shares in and the designation, rights, privileges, restrictions and conditions attaching to the shares of each series;
- (d) If the right to transfer shares of the corporation is to be restricted, a statement that the right to transfer shares is restricted and the nature of such restrictions;
- (e) Any provision limiting or excluding the pre-emptive right referred to in section 5.05;
- (f) Any provision excluding the right of cumulative voting referred to in section 9.06;
- (g) The number of directors or, subject to paragraph (a) of section 9.06, the minimum and maximum number of directors of the corporation;
- (h) Any restrictions on the business or businesses which the corporation may carry on.

Additional provisions in articles

¶ 55, 56

(2) The articles of incorporation may set out any provisions permitted by this Act or by law to be set out in

- (a) the by-laws of the corporation, or
- (b) a unanimous shareholder agreement referred to in section 11.14.

Special majorities

(3) If the articles of incorporation or a unanimous shareholder agreement require a greater number of votes of directors or

shareholders than required by this Act to effect any action, the provisions of the articles of incorporation or the unanimous shareholder agreement shall prevail.

- (4) The incorporators shall sign the articles of incorporation which shall state the name, postal address and occupation of each of them. Signature

2.03

An incorporator shall send or deliver to the Registrar articles of incorporation and the documents required by sections 4.01 and 9.05. Delivery of articles of incorporation
¶ 50, 51

2.04

Upon delivery to him of articles of incorporation the Registrar shall issue a certificate of incorporation in accordance with section 20.10. Certificate of incorporation
¶ 51, 52

2.05

A corporation comes into existence upon issue of a certificate of incorporation. Effect of issue of certificate of incorporation

2.06

- (1) The word “Limited”, “Limitée”, “Incorporated” or “Incorporée” or the appropriate abbreviation “Ltd.”, “Ltée” or “Inc.” shall be the last word of the name of every corporation but a corporation may use and may be legally designated by either the full or the abbreviated form. Name of corporation
¶ 57,
- (2) The Registrar may exempt a body corporate continued as a corporation under this Act from the provisions of subsection (1). Exemption
¶ 58
- (3) Subject to subsection (1) of section 2.08, a corporation having a name in an English form may state in its articles a French form of such name and a corporation having a name in a French form may state in its articles an English form of such name. Alternative French and English form of name
¶ 59
- (4) A corporation shall Publication of name
- (a) display or mention its name in legible characters in all negotiable instruments and orders for goods or services issued or made by or on behalf of the corporation, and ¶ 60
- (b) in all other particulars take reasonable steps to give notice of the corporation’s name to all persons dealing with the corporation.
- (5) If a corporation has a seal it shall engrave its name in legible characters on the seal and, if the articles state both Name on seal
¶ 59

a French and an English form of name, it shall either have one seal showing both the French and English forms of its name or shall have two seals, each of which shall be equally valid, one showing the French and the other the English form of its name.

2.07

Reserving
name

¶ 61

Designating
number

¶ 62, 63

- (1) The Registrar may, upon request and upon payment of the prescribed fee, reserve for 60 days a name for an intended corporation or for a corporation about to change its name.
- (2) If requested to do so by the incorporators, the Registrar shall determine and assign to a corporation a designating number as its name.

2.08

Prohibited
names

¶ 64, 65, 66

- (1) A corporation shall not be incorporated with or have a name
 - (a) that is the same as a name under which an existing proprietorship, partnership, association or body corporate is, to the knowledge of the Registrar, carrying on or commencing to carry on business in Canada, or is so similar thereto as is likely to mislead or confuse, except where the existing proprietorship, partnership, association or body corporate is in the course of being dissolved or changing its name and signifies its consent in the manner that the Registrar may require,
 - (b) that is in the opinion of the Registrar objectionable, or
 - (c) the exclusive right to which is reserved in the manner provided in section 2.07.

Directing
change of
name

¶ 67

- (2) If, through inadvertence or otherwise, a corporation
 - (a) comes into existence or is continued with a name, or
 - (b) upon an application to change its name from an earlier name or designating number is granted a name which contravenes this section, the Registrar may direct the corporation to change its name in accordance with section 14.01.

Assignment of
designating
number

¶ 67

- (3) If a corporation has been directed under subsection (2) to change its name and has not within 30 days from the service of a directive to that effect changed its name to a name that complies with this Act, the Registrar may revoke the name of the corporation and assign to it a designating number and, until changed in accordance with section 14.01, the name of the corporation shall thereafter be the designating number so assigned.

2.09

- | | |
|--|----------------------------------|
| (1) If a corporation has had its name revoked and a designating number assigned to it under subsection (3) of section 2.08, the Registrar shall issue a certificate of amendment showing the new name of the corporation and shall forthwith give notice of the change of name by one insertion in the Canada Gazette. | Certificate of amendment ¶ 67 |
| (2) Upon the issue of a certificate of amendment under subsection (1) the articles of the corporation are deemed to be amended accordingly. | Effect of certificate |

2.10

- | | |
|---|--|
| (1) A person or persons who purport to enter into a contract in the name of or on behalf of a corporation before it comes into existence shall be personally bound by the contract and entitled to the benefits thereof, except as provided in this section. | Personal liability ¶ 68, 69, 70 |
| (2) A corporation may within a reasonable time after it comes into existence, by any action or conduct signifying its intention to be bound thereby, adopt a written contract made before it came into existence in its name or on its behalf, and upon such adoption | Pre-incorporation and pre-amalgamation contracts ¶ 62, 71, 72 |
| (a) the corporation shall be bound by the contract and entitled to the benefits thereof as if the corporation had been in existence at the date of such contract and had been a party thereto, and | |
| (b) the person or persons who purported to act in the name of or on behalf of the corporation shall, except as provided in subsection (3), cease to be bound by or entitled to the benefits of the contract. | |
| (3) Except as provided in subsection (4), whether or not a contract made before the coming into existence of a corporation is adopted by the corporation the other party to the contract may apply to a court for an order fixing obligations under the contract as joint or joint and several or apportioning liability between or among the corporation and the person or persons who purported to act in the name of or on behalf of the corporation and upon such application the court may make any order it thinks fit. | Application to court ¶ 72, 73 |
| (4) If expressly so provided in the written contract, the person or persons who purported to act in the name of or on behalf of the corporation before it came into existence shall not in any event be bound by the contract nor entitled to the benefits thereof. | Exemption from personal liability ¶ 73 |

PART 3.00

Capacity and Powers

Capacity of
a corporation
¶ 74 to 81

Extra-
territorial
capacity

Powers of a
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¶ 80, 81

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business or
powers

Rights
preserved
¶ 79

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to court
¶ 82, 83

Parties to
proceedings

Court order

No construc-
tive notice
¶ 84

3.01

- (1) A corporation has and is deemed always to have had the capacity of a natural person of full capacity.
- (2) A corporation has and is deemed always to have had the capacity to carry on its business and exercise its powers in any jurisdiction outside Canada to the extent that the laws of such jurisdiction permit.

3.02

- (1) It shall not be necessary for a corporation to pass a by-law to confer any particular power on it or on its directors.
- (2) A corporation shall not carry on any business nor exercise any power that it is restricted by its articles from carrying on or exercising, nor exercise any of its powers in a manner inconsistent with its articles.
- (3) No act of a corporation and no transfer of property to or by a corporation shall be invalid by reason only that the act or transfer contravened subsection (2).

3.03

- (1) If a corporation has contravened or is about to contravene subsection (2) of section 3.02 a shareholder, or a creditor with whom the corporation has agreed to restrict the business it carries on or the powers it exercises, may apply to a court for an order
 - (a) restraining the corporation from doing any act or transferring or receiving any property,
 - (b) setting aside any contract to which the corporation is a party, or
 - (c) compensating the corporation or any other party to the contract.
- (2) If an act or transfer of property sought to be set aside under subsection (1) is being or is to be performed or made under a contract to which a corporation is a party, all parties to the contract shall be made parties to the proceedings.
- (3) If upon an application under subsection (1) it appears that a contract has not been substantially performed by any party, the court may make any order it thinks fit.

3.04

No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a corporation by reason only that the document has been filed by the Registrar or is available for inspection at an office of the corporation.

3.05

A corporation may not assert against a person dealing with the corporation or with someone who has acquired rights from the corporation that

Authority of
directors,
officers and
agents

¶ 85 to 88

- (a) the articles, by-laws and any unanimous shareholder agreement have not been complied with,
- (b) the persons named in the most recent notice sent to the Registrar under section 9.05 or 9.12 are not the directors of the corporation,
- (c) the place named in the most recent notice sent to the Registrar under section 4.01 is not the registered office of the corporation,
- (d) a person held out by a corporation as an officer or agent of the corporation has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such officer or agent, and
- (e) an officer or agent of the corporation having authority to issue or to certify copies of a document on behalf of the corporation did not have authority to warrant the genuineness of the document and the accuracy of copies so issued,

except where the person has or ought to have by virtue of his position with or relationship to the corporation knowledge to the contrary.

PART 4.00

Registered Office, Records and Seal

4.01

Registered
office

¶ 89, 90

Notice of
registered
office

Change of
address of
registered
office

Notice of
change of
address

- (1) A corporation shall at all times have an address for its registered office in the place within Canada specified in its articles.
- (2) A notice of registered office in prescribed form shall be delivered to the Registrar together with any articles that designate or change the place of the registered office of the corporation.
- (3) The directors of a corporation may change the address of the registered office within the place specified in the articles.
- (4) A corporation shall deliver to the Registrar, in triplicate and within 15 days of any change of address of its registered office, a notice in prescribed form showing the change of address of the registered office, and the Registrar shall
 - (a) file a copy thereof,
 - (b) publish a copy of the notice in the Canada Gazette, and
 - (c) send forthwith by registered mail one copy of the notice, endorsed to indicate that a copy has been filed, to the address that was formerly the registered office of the corporation.

4.02

Corporate
records

¶ 91

Directors
records

Place of
directors
records

Records in
Canada

- (1) A corporation shall prepare and maintain at its registered office records containing
 - (a) the articles and the by-laws, and all amendments thereto,
 - (b) minutes of meetings and resolutions of shareholders,
 - (c) a register of directors showing the names, addresses and occupations of all former and present directors of the corporation and the dates on which each became and ceased to be a director, and
 - (d) a securities register complying with section 6.03.
- (2) In addition to the records described in subsection (1) a corporation shall prepare and maintain records containing minutes of meetings and resolutions of the directors and of any committee thereof and adequate accounting records.
- (3) The records described in subsection (2) shall be kept at the registered office of the corporation or at such other place as the directors think fit and shall at all times be open to inspection by the directors.
- (4) If accounting records of a corporation are kept at a place outside Canada there shall be kept at the registered office

or other office in Canada accounting records adequate to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis.

- (5) A corporation that fails to comply with this section is guilty of an offence. Offence

4.03

- (1) Shareholders and creditors of a corporation and their agents and legal representatives may examine the records referred to in subsection (1) of section 4.02 during usual business hours of the corporation, and may make extracts therefrom, free of charge, and any other person may also do so upon payment of a reasonable fee. Access to corporate records
¶ 92
- (2) A shareholder of a corporation is entitled upon request and without charge to a copy of the articles and by-laws. Copies of corporate records
¶ 93
- (3) (a) Any person, upon payment of a reasonable fee and upon delivering to the corporation or its agent the affidavit referred to in paragraph (c), may upon application require a corporation or its agent to furnish within 10 days from the delivery of the affidavit a list setting out the names of the shareholders of the corporation, the number of shares owned by each shareholder and the address of each shareholder as shown on the records of the corporation, made up to a date not more than 10 days before the date of delivering the affidavit. Shareholder lists
¶ 94
- (b) If the applicant is a body corporate, the affidavit shall be made by a director or officer authorized by the directors of the body corporate.
- (c) The affidavit required under paragraph (a) shall state
- (i) the name, address and occupation of the applicant,
 - (ii) the name and address for service of the body corporate if the applicant is a body corporate, and
 - (iii) that the list will not be used except as permitted under paragraph (d).
- (d) A list of shareholders obtained under this subsection shall not be used by any person except in connection with
- (i) an effort to influence the voting of shareholders of the corporation,
 - (ii) an offer to acquire shares of the corporation.
- (4) A person who fails to comply with subsection (3) is guilty of an offence. Offence

4.04

Form of
record

¶ 95

- (1) Records and registers required by this Act to be prepared and maintained may be in a bound or loose-leaf form, or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device which is capable of reproducing any required information in intelligible form within a reasonable time.

Precautions

- (2) A corporation and its agents shall take adequate precautions to
 - (a) prevent loss or destruction,
 - (b) prevent falsification of entries, and
 - (c) facilitate detection and correction of inaccuracies of or in the records and registers required by this Act to be prepared and maintained.

Offence

- (3) A person who fails to comply with this section is guilty of an offence.

4.05

Corporate
seal

¶ 96

- (1) A corporation may have a corporate seal and may change the seal, and the presence of a corporate seal on a written instrument or agreement purporting to be executed by authority of the corporation is prima facie proof that the instrument or agreement was so executed.

Facsimile
seal

- (2) A corporation may adopt for use in any jurisdiction outside Canada a facsimile of the corporate seal with the addition on its face of the name of the jurisdiction where it is to be used.

Seal not
essential

- (3) If an instrument or agreement is executed on behalf of a corporation by a duly authorized director, officer or agent of the corporation, the instrument or agreement is valid notwithstanding that a corporate seal is not affixed thereto.

PART 5.00

Corporate Finance

5.01

Shares

¶ 97 to 101

Class of
shares

¶ 102

Voting
rights

¶ 102

Class
voting

¶ 102

- (1) Shares of a corporation shall be registered shares without nominal or par value.
- (2) The articles of a corporation may provide for more than one class of shares and, if they so provide, shall also set out the rights, privileges, restrictions and conditions attaching to the shares of each class.
- (3) If the articles do not provide for more than one class of shares the shares of the corporation shall confer on the holders thereof the right to vote at all meetings of shareholders.
- (4) If the articles provide for more than one class of shares the shares of each class shall confer on the holders thereof the right to vote at all meetings of shareholders unless the articles otherwise provide, in which case the articles shall confer on the holders of one or more of the classes of shares the right to vote in all elections of directors and of the auditor of the corporation.

5.02

Issue of
securities

¶ 103, 104,
115, 116

Shares non-
assessable

¶ 104

Consideration

¶ 104

Consideration
other than
money

- (1) Securities of a corporation may be issued at such times and to such persons and for such consideration as the directors acting in good faith and in the best interests of the corporation may determine, but unless the articles otherwise provide each shareholder shall have the pre-emptive right described in section 5.05.
- (2) Shares issued in accordance with this Act are non-assessable and the holders shall not be liable to the corporation or to its creditors in respect thereof.
- (3) A security of a corporation shall not be issued until it is fully paid, and a security is not fully paid until the corporation has received all the consideration therefor in money, or in property or past services that is the fair equivalent of the money that the corporation would have received if the security had been issued for money.
- (4) In determining whether property or past services is the fair equivalent of a money consideration the directors may take into account reasonable charges and expenses of organization and re-organization and payments for property and past services reasonably expected to benefit the corporation.

5.03

Stated
capital

¶ 105, 106, 107

A corporation shall maintain a separate stated capital account for each class and series of shares issued, and the consideration

received by the corporation for each share issued shall be added to the stated capital account maintained for the shares of that class or series.

5.04

- | | |
|---|----------------------------------|
| (1) The articles of a corporation may authorize the issue of any class of shares in one or more series and may authorize the directors to fix the number of shares in and the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations on such rights, privileges, restrictions and conditions that are set out in the articles. | Shares in series ¶ 108 to 112 |
| (2) If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class shall participate rateably in respect of dividends, including accumulated dividends, and return of capital. | Series participation |
| (3) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section shall confer upon a series of shares a priority in respect of dividends or return of capital over any series of shares of the corporation having a similar priority that are then outstanding. | Restrictions on series |
| (4) Before the issue of shares of a series authorized under this section the directors shall deliver to the Registrar articles of amendment in prescribed form to designate a series of shares. | Amendment of articles ¶ 113, |
| (5) Upon delivery to him of articles of amendment designating a series of shares the Registrar shall issue a certificate of amendment in accordance with section 20.10. | Certificate of amendment |
| (6) Upon the issue of a certificate of amendment the amendment becomes effective and the articles are deemed to be amended accordingly. | Effect of certificate |

5.05

- | | |
|---|--------------------------------------|
| (1) Unless the articles otherwise provide, no shares of a corporation shall be issued unless the shares have first been offered to the shareholders holding shares of that class, who shall have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at the price and on the terms at which such shares are to be offered to others. | Pre-emptive right ¶ 114, 115, 116 |
| (2) Notwithstanding subsection (1), unless the articles expressly so provide, shareholders have no pre-emptive right in respect of shares issued | Exception ¶ 117 |
| (a) for a consideration other than money, | |

- (b) as a share dividend, or
- (c) pursuant to the exercise of conversion privileges or options previously granted by the corporation.

5.06

Options
and rights

¶ 118, 119

Transferable
rights

Reserved
shares

¶ 120

- (1) A corporation may issue certificates, warrants or other evidence of conversion privileges, options or rights to purchase securities of the corporation, setting out the conditions therein, or may embody such conditions in certificates evidencing any securities to which the conversion privileges, options or rights may be attached.
- (2) Conversion privileges, options and rights to purchase securities of a corporation may be transferable or non-transferable, and options and rights to purchase may be separable or inseparable from any securities to which they may be attached.
- (3) If a corporation has granted privileges to convert any securities issued by the corporation into shares, or into shares of another class or series, or has issued or granted options or rights to purchase shares, and if the articles limit the number of authorized shares, the corporation shall reserve and continue to reserve sufficient authorized shares to meet the exercise of such conversion privileges, options and rights.

5.07

Corporation
holding its
own shares

¶ 121 to 126,
136

Exception

Exception

Acquisition of
corporation's
own shares

¶ 127

- (1) Except as provided in this section and in sections 5.08, 5.09 and 5.10, a corporation shall not be a shareholder in itself or in its holding body corporate and an issue or transfer of shares of a corporation to itself or to any of its subsidiaries is void.
- (2) Notwithstanding subsection (1), a corporation may hold in the capacity of a legal representative shares in itself or in its holding body corporate unless it or the holding body corporate or a subsidiary of either of them has a beneficial interest in the shares.
- (3) Notwithstanding subsection (1), a corporation may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

5.08

- (1) Notwithstanding section 5.07, but subject to subsection (2) and to any provisions in its articles, a corporation may for

any reason purchase or otherwise acquire shares issued by it or by its holding body corporate.

- (2) A corporation shall not purchase or acquire under subsection (1) shares issued by it or by its holding body corporate if there are reasonable grounds for believing that

Limitation
¶ 127

- (a) the corporation is or would after the purchase or acquisition be unable to pay its liabilities as they become due, or
- (b) the value of the corporation's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

- (3) For the purposes of subsection (2) account may be taken of an unrealized increment in the value of any marketable asset, and no allowance is required to be made for depletion of a wasting asset.

Valuation
¶ 128, 129, 132

5.09

- (1) Notwithstanding sections 5.07 and 5.08, but subject to subsection (2) and to any provisions in its articles, a corporation may purchase or otherwise acquire shares issued by it or by its holding body corporate to

Alternative acquisition of corporation's own shares

- (a) settle or compromise a debt or claim asserted by or against the corporation or the holding body corporate,
- (b) eliminate fractional shares,
- (c) fulfil the terms of a non-assignable agreement under which the corporation or the holding body corporate has an option or is obliged to purchase shares owned by a director, officer or employee of the corporation or the holding body corporate,
- (d) satisfy the claim of a shareholder who dissents under section 14.17, or
- (e) comply with an order under section 19.04.

¶ 130

- (2) A corporation shall not purchase or acquire under paragraphs (a) to (c) of subsection (1) shares issued by it or by its holding body corporate if there are reasonable grounds for believing that

Limitation

- (a) the corporation is or would after the purchase or acquisition be unable to pay its liabilities as they become due, or
- (b) the value of the corporation's assets would thereby be less than the aggregate of its liabilities and the amounts required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid prior to the holders of the shares to be purchased or acquired.

Valuation

- (3) For the purposes of subsection (2) account may be taken of an unrealised increment in the value of any marketable asset, and no allowance is required to be made for depletion of a wasting asset.

5.10

Redemption
of shares

¶ 131, 132

- (1) Notwithstanding sections 5.07, 5.08 and 5.09, but subject to subsection (2) and to any provisions in its articles, a corporation may purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price thereof stated in the articles or calculated according to a formula stated in the articles.

Limitation

¶ 132

- (2) A corporation shall not purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that
 - (a) the corporation is or would after the purchase or redemption be unable to pay its liabilities as they become due, or
 - (b) the value of the corporation's assets would thereby be less than the aggregate of its liabilities and the amounts required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid rateably with or prior to the holders of the shares to be purchased or redeemed.

Valuation

¶ 132

- (3) For the purposes of subsection (2) account may be taken of an unrealized increment in the value of any marketable asset, and no allowance is required to be made for depletion of a wasting asset.

5.11

Adjustment
of stated
capital

¶ 133

- (1) Upon a purchase, redemption or other acquisition by a corporation under section 5.10 or, subject to subsection (2), under section 5.09, 14.17 or paragraph (f) of subsection (3) of section 19.04, of shares issued by it, the corporation shall deduct from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

- | | |
|---|--|
| (2) Subsection (1) shall not apply if the purchase or other acquisition can be made in compliance with subsection (2) of section 5.08. | Exception |
| (3) Subject to subsection (4), a corporation shall deduct the amount of a payment made to a shareholder under paragraph (g) of subsection (3) of section 19.04 from the stated capital account maintained for the class or series of shares in respect of which the payment was made. | Adjustment of stated capital |
| (4) Subsection (3) shall not apply if the payment could be made in compliance with subsection (2) of section 5.08 if it was a payment made to purchase or to otherwise acquire shares issued by the corporation. | Exception |
| (5) Upon a conversion or change under section 14.01 or 14.18 of issued shares of a corporation into shares of another class or series the corporation shall | Adjustment of stated capital |
| (a) deduct from the stated capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series converted or changed, divided by the number of issued shares of that class or series immediately before the conversion or change, and | |
| (b) add the result obtained under paragraph (a) to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been converted or changed. | |
| (6) Shares issued by a corporation and purchased, redeemed or otherwise acquired by it shall be cancelled or, if the articles limit the number of authorized shares, shall be restored to the status of authorized but unissued shares. | Cancellation or restoration of shares ¶ 134 |
| (7) For the purposes of this section, a corporation holding shares in itself as permitted by subsections (2) and (3) of section 5.07 is deemed not to have purchased, redeemed or otherwise acquired such shares. | Exception |
| (8) Shares issued by a corporation and converted or changed under section 14.01 or 14.18 into shares of another class or series shall become issued shares of the class or series of shares into which the shares have been converted or changed and, if the articles limit the number of authorized shares of the class or series converted or changed, shall be restored to the status of authorized but unissued shares of that class or series. | Conversion of shares ¶ 135 |

Acquisition
of securities

¶ 137

- (9) Securities issued by a corporation and purchased, redeemed or otherwise acquired by it, except shares, may be cancelled or re-issued, subject to any applicable trust indenture or other agreement.

Pledge

¶ 137

- (10) Securities issued by a corporation and purchased or otherwise acquired by it, except shares, may be pledged or hypothecated to secure any debt of the corporation, and any such pledge or hypothecation is not a cancellation of the securities.

5.12

Enforce-
ability of
contract

¶ 138

- (1) A contract with a corporation providing for the purchase, redemption or other acquisition of shares of the corporation or the purchase or other acquisition of shares of its holding body corporate is specifically enforceable against the corporation except to the extent that the corporation cannot perform the contract without thereby being in breach of section 5.09 or 5.10.

Burden of
proof

- (2) In any action brought on a contract referred to in subsection (1) the corporation has the burden of proving that performance thereof is prevented by section 5.09 or 5.10.

5.13

Commission
for sale
of shares

¶ 139

The directors acting in good faith and in the best interests of a corporation may authorize the corporation to pay a commission to any person in consideration of his purchasing or agreeing to purchase shares of the corporation, from the corporation or from any other person, or procuring or agreeing to procure purchasers for any such shares.

5.14

Dividends

¶ 140, 141, 142

- (1) A corporation shall not pay a dividend if there are reasonable grounds for believing that
- (a) the corporation is or would after the payment thereof be unable to pay its liabilities as they become due, or
 - (b) the value of the corporation's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

Valuation

- (2) For the purposes of subsection (1) account may be taken of an unrealized increment in the value of any marketable asset, and no allowance is required to be made for depletion of a wasting asset.

5.15

- | | |
|--|--------------------------------|
| (1) Subject to section 5.14, a corporation may pay a dividend in money or in kind or by issuing fully paid shares of the corporation. | Form of dividend ¶ 143, 144 |
| (2) If shares of a corporation are issued in payment of a dividend the amount of the dividend shall be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend. | Adjustment of stated capital |

5.16

- | | |
|--|--|
| (1) A corporation shall not, directly or indirectly, (a) make a loan to any person that is secured by a share of the corporation, or (b) give financial assistance to any person, by means of a loan, guarantee or otherwise, for the purpose of or in connection with a purchase of a share issued or to be issued by the corporation. | Prohibited loans and guarantees ¶ 145 |
| (2) A corporation shall not, directly or indirectly, make a loan to or guarantee a loan for a shareholder, director or officer, or an associate of any such person, unless the loan or guarantee has been previously authorized by a special resolution. | Shareholder authorization |
| (3) A corporation shall not make a loan or give a guarantee under subsection (2) if there are reasonable grounds for believing that (a) the corporation is or would after making the loan or guarantee be unable to pay its liabilities as they become due, or (b) the value of the corporation's assets, excluding the amount of the loan and any assets pledged or encumbered to secure the guarantee, would after making the loan or guarantee be less than the aggregate of its liabilities. | Limitation |
| (4) For the purposes of subsection (3) account may be taken of an unrealized increment in the value of any marketable asset, and no allowance is required to be made for depletion of a wasting asset. | Valuation |
| (5) Notwithstanding subsections (1) and (2) a corporation may (a) lend money in the ordinary course of business if the lending of money is part of the ordinary business of the corporation, (b) make loans to shareholders bona fide in the employment of the corporation to enable or assist them to | Permitted loans |

purchase or erect dwelling houses for their own occupation, and the corporation may take from such employees mortgages or other security for the repayment of such loans,

- (c) provide, in accordance with any plan or scheme for the time being in force, money for the purchase by trustees of shares of the corporation, to be held by or for the benefit of employees of the corporation, including a director or officer of the corporation, or
- (d) if authorized by a special resolution, make a loan to or guarantee a loan for a shareholder, director or officer of the corporation, to enable him to purchase shares of the corporation from a shareholder or his legal representative.

Enforce-
ability

¶ 147

- (6) A corporation or a bona fide lender for value without notice that a contract contravenes this section may enforce the contract.

Shareholder
immunity

¶ 148

Lien on
shares

¶ 149

5.17

- (1) The shareholders of a corporation are not, as shareholders, liable for any act or default of the corporation.
- (2) Subject to subsection (8) of section 6.02, the articles of a corporation may provide that the corporation has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the corporation.

PART 6.00

Security Certificates, Registers and
Transfers

Application
of Part
¶ 150

Interpretation
¶ 151

“adverse
claim”

“bearer”

“bona fide
purchaser”

“broker”

“delivery”

“fiduciary”

“fungible”

“genuine”

“good faith”

“holder”

“issuer”

“overissue”

“security”

6.01

- (1) The transfer or transmission of a security shall be governed by this Part.
- (2) In this Part,
 - (a) “adverse claim” includes a claim that a transfer was or would be unauthorized or wrongful or that a particular person is the owner of or has an interest in the security;
 - (b) “bearer” means the person in possession of a security payable to bearer or endorsed in blank;
 - (c) “bona fide purchaser” means a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or endorsed to him or in blank;
 - (d) “broker” means a person who is engaged for all or part of his time in the business of buying and selling securities, and who in the transaction concerned acts for, or buys a security from, or sells a security to a customer;
 - (e) “delivery” means voluntary transfer of possession;
 - (f) “fiduciary” means a trustee, guardian, committee, curator, tutor, executor, administrator, representative of a deceased person, or any other person acting in a fiduciary capacity;
 - (g) “fungible” securities means securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit;
 - (h) “genuine” means free of forgery or counterfeiting;
 - (i) “good faith” means honesty in fact in the conduct of the transaction concerned;
 - (j) “holder” means a person in possession of a security issued or endorsed to him or to bearer or in blank;
 - (k) “issuer” includes a corporation
 - (i) that is required by this Act to maintain securities registers,
 - (ii) that directly or indirectly creates fractional interests in its rights or property and that issues securities as evidence of such fractional interests;
 - (l) “overissue” means the issue of shares in excess of any maximum number of shares which the issuer is authorized by its articles to issue;
 - (m) “security” means an instrument issued by a corporation which is

- (i) in bearer or registered form,
- (ii) of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,
- (iii) either one of a class or series or by its terms is divisible into a class or series of instruments, and
- (iv) evidence of a share, participation or other interest in or obligation of a corporation;
- (n) “subsequent purchaser” means a person who takes a security other than by original issue; “subsequent purchaser”
- (o) “unauthorized” signature or endorsement means one made without actual, implied or apparent authority and includes a forgery. “unauthorized”
- (3) Securities governed by this Part are negotiable instruments for the purposes of this Part. Negotiable instruments
- (4) A security is in “registered form” if Registered form
 - (a) it specifies a person entitled to the security or to the rights it evidences, and its transfer may be entered in a securities register, or
 - (b) it bears a statement that it is in registered form.
- (5) A security is in “bearer form” when it is payable to bearer according to its terms and not by reason of any endorsement. Bearer form
- (6) A guarantor for an issuer is deemed to be an issuer to the extent of his guarantee whether or not his obligation is noted on the security. Guarantor for issuer

6.02

- (1) Every security holder is entitled to a certificate from a corporation in respect of the securities of that corporation held by him, in the form required by this Act and the by-laws of the corporation. Right of holder
¶ 152, 153
- (2) A corporation may charge a fee of not more than \$1.00 for a share certificate issued in respect of a transfer. Fee for certificate
¶ 153
- (3) A corporation is not required to issue more than one certificate in respect of a security or securities held jointly by several persons, and delivery of a certificate to one of several joint security holders is sufficient delivery to all. Joint holders
- (4) A security certificate shall be signed manually by at least one officer or director of the corporation or by or on behalf of a registrar, transfer agent or branch transfer agent of the corporation, or by a trustee who certifies it in accordance with a trust indenture, and any additional sig- Signatures

| | |
|-------------------------------|--|
| | natures required on a security certificate may be printed or otherwise mechanically reproduced thereon. |
| No manual signature required | (5) Notwithstanding subsection (4), a manual signature is not required on a certificate representing a fractional share, an option or a right to purchase a security or on a scrip certificate. |
| Continuation of signature | (6) If a security certificate contains a printed or mechanically reproduced signature of a person, the corporation may issue the security certificate, notwithstanding that the person has ceased to be an officer or director of the corporation, and the security certificate is as valid as if he were an officer or director at the date of its issue. |
| Contents of share certificate | (7) Each share certificate issued by a corporation shall state upon its face, <ul style="list-style-type: none"> (a) the name of the corporation and the date of its incorporation, (b) the words "Incorporated under the Canada Business Corporations Act", (c) the name of the person to whom it was issued, and (d) the number and class of shares and the designation of the series, if any, which the certificate represents. |
| Restrictions ¶ 154 | (8) If a security certificate issued by a corporation or by a body corporate before the body corporate was continued under this Act is subject to <ul style="list-style-type: none"> (a) a restriction on its transfer, (b) a lien in favour of the corporation, (c) a unanimous shareholder agreement referred to in section 11.14, or an endorsement under subsection (10) of section 14.17, such restriction, lien, agreement or endorsement is ineffective against a transferee of the security unless it is noted conspicuously on the security certificate. |
| Particulars of class ¶ 155 | (9) A share certificate issued by a corporation which is authorized to issue shares of more than one class or series shall state legibly on the certificate the rights, privileges, restrictions and conditions of the shares of each class and series. |
| Separate text | (10) Notwithstanding subsection (9), a share certificate may state that the class or series of shares it represents is subject to rights, privileges, restrictions and conditions and that the corporation shall furnish to a shareholder on demand and without charge a full copy of the text of the rights, privileges, restrictions and conditions of <ul style="list-style-type: none"> (a) each class authorized to be issued, and (b) each series so far as the same have been fixed by the directors, and also the authority of the directors to fix |

the rights, privileges, restrictions and conditions of subsequent series.

- | | |
|---|---------------------------|
| (11) A corporation may issue a certificate for a fractional share or may issue in place thereof scrip certificates in bearer form that entitle the holder to receive a certificate for a full share upon the surrender of scrip certificates aggregating a full share. | Fractional share ¶ 156 |
| (12) The directors may attach conditions to any scrip certificates issued by a corporation, including conditions that | Scrip certificates |
| <ul style="list-style-type: none"> (a) the scrip certificates become void if not exchanged for a share certificate representing a full share before a specified date, and (b) any shares for which such scrip certificates are exchangeable may, notwithstanding section 5.05, be issued by the corporation to any person and the proceeds thereof distributed rateably to the holders of the scrip certificates. | |
| (13) A holder of a scrip certificate or a certificate representing a fractional share is not entitled to exercise voting rights or to receive dividends. | Holder of scrip |

6.03

- | | |
|---|------------------------------|
| (1) A corporation shall maintain records of the securities issued by it in registered form, showing with respect to all securities and each class or series thereof | Securities records ¶ 157 |
| <ul style="list-style-type: none"> (a) the names, alphabetically arranged, and the last known address of each person who is or has been a security holder, (b) the number of securities held by each security holder, and (c) the date and particulars of the issue and transfer of each security. | |
| (2) A corporation may appoint agents to maintain central securities registers and any branch securities registers. | Central and branch registers |
| (3) Central securities registers shall be maintained by the corporation at its registered office or at any other place in Canada designated by the directors, and any branch securities registers may be kept at any place in or out of Canada designated by the directors. | Place of register |
| (4) Registration of the transfer of a security in the central securities register or in a branch securities register of a corporation is complete and valid registration for all purposes. | Effect of registration |
| (5) A branch securities register shall only contain particulars of securities transferred at that branch. | Branch register |

Central
register

- (6) Particulars of each transfer of a security registered in a branch securities register shall also be kept in the corresponding central securities register.

Destruction
of certifi-
cates

- (7) A corporation, registrar or transfer agent is not liable to produce a cancelled security certificate or any document that is evidence of the issue or transfer of the cancelled security certificate after 6 years from the date of its cancellation or, in the case of a certificate representing a debt obligation, after the date of retirement of the whole debt obligation of which that certificate represents a part.

¶ 158

6.04

Fixing
record
date

- (1) For the purpose of determining shareholders entitled to
- (a) receive payment of a dividend, or
 - (b) participate in a liquidation distribution
- or of determining the shareholders for any other purpose, except the right to receive notice of a meeting, the directors may fix in advance a date as the record date for such determination of shareholders, but such record date shall not precede by more than 50 days the particular action to be taken.

¶ 159

Notice of
meeting

- (2) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the directors may fix in advance a date as the record date for such determination of shareholders, but such record date shall not precede by more than 50 days nor less than 10 days the date on which the meeting is to be held.

¶ 269

No record
date fixed

- (3) If no record date is fixed,
- (a) the record date for the determination of shareholders entitled to notice of a meeting of shareholders shall be at the close of business on the day immediately preceding the day on which the notice is given, or, if no notice is given, the day on which the meeting is held, and
 - (b) the record date for the determination of shareholders for any purpose other than that specified in paragraph (a) shall be at the close of business on the day on which the directors pass the resolution relating thereto.

6.05

Dealings
with regis-
tered holder

- (1) Before the presentment for registration of transfer of a security in registered form, a corporation or a trustee defined in section 7.01 may, subject to subsection (7) of section 6.31, treat as absolute owner of a security the

¶ 160

person in whose name the security is registered in a securities register, as if that person had full legal capacity and authority to exercise all rights of ownership, irrespective of

- (a) any knowledge or notice to the contrary, or,
- (b) any description indicating a pledge, a representative or other fiduciary relationship or any reference to any other instrument or to the rights of any other person named in its records or on the security certificate.

- (2) Notwithstanding subsection (1), a corporation the articles of which restrict the right to transfer its securities shall, and any other corporation may, treat a person as a registered security holder entitled to exercise all the rights of the security holder he represents, if that person furnishes evidence to the corporation that he is

Constructive
registered
holder

- (a) the executor, administrator, or legal representative of the heirs of the estate of a deceased security holder,
- (b) a guardian, committee, trustee, curator or tutor representing an infant or minor, an incompetent or a missing person who is a registered security holder, or
- (c) a liquidator or a trustee in bankruptcy for a registered security holder.

- (3) If a fiduciary or person upon whom the ownership of a security devolves by operation of law, other than a person described in subsection (2), furnishes proof satisfactory to the corporation of his authority to exercise rights or privileges in respect of a security of the corporation which is not registered in his name, the corporation may treat such person as entitled to exercise those rights or privileges.

Permissible
registered
holder

¶ 161

- (4) A corporation is not required to enquire into the existence of, or see to the performance or observance of any duty or obligation owed to a third person by a registered holder of any of its securities or by anyone who it treats, as permitted or required by this section, as the owner or registered holder thereof.

Immunity of
corporation

¶ 162

- (5) If a corporation permits an infant or minor to exercise any rights or ownership in its securities, no subsequent repudiation or avoidance is effective as against the corporation.

Minors

¶ 163

- (6) A corporation may treat as owner of a security the survivor or survivors of persons to whom the security was issued as joint holders, if it receives proof satisfactory to it of the death of any such joint holder.

Joint
holders

¶ 163

- (7) Subject to any law relating to the collection of taxes, a legal representative of a deceased holder of a security is entitled to become a registered holder or to designate a registered

Trans-
mission of
securities

¶ 164

holder, if he deposits with the corporation or its transfer agent

- (a) the original grant of probate or of letters of administration, or a court certified copy thereof or a copy thereof certified to be a true copy by a trust company incorporated under the laws of Canada or a province or by a lawyer acting on behalf of such legal representative, or, in case of transmission by notarial will in Quebec, a copy thereof authenticated pursuant to the laws of that province,
- (b) an affidavit or declaration of transmission made by a legal representative, stating the particulars of the transmission, and
- (c) the security certificate that was owned by the deceased holder
 - (i) in case of a transfer to a legal representative, with or without the endorsement of that representative, and
 - (ii) in case of a transfer to the heirs of the deceased holder, endorsed in accordance with section 6.19, and accompanied by any assurance the corporation may require under section 6.31.

Excepted
trans-
missions

- (8) Notwithstanding subsection (7), if the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or letters of administration in respect of the transmission, a legal representative of the deceased holder is entitled, subject to any law relating to the collection of taxes, to become a registered holder or to designate a registered holder, if he deposits with the corporation or its transfer agent

- (a) the security certificate that was owned by the deceased holder, and
- (b) reasonable proof of the governing laws, of the deceased holder's interest in the security, and of the right of the legal representative or the person he designates to become registered holder.

Right of
corporation

- (9) Deposit of the documents required by subsection (7) or (8) is deemed to be authority empowering a corporation or its transfer agent to record in a securities register the transmission of a security from the deceased holder to his legal representative or to such person as the legal representative may designate and, thereafter, to treat the person who thus becomes a registered holder as the owner of those securities.

6.06

- (1) The provisions of this Part which validate a share or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but
- Overissue
- (a) if the issuer at any time subsequently amends its articles to increase its authorized shares to a number equal to or in excess of the number of shares previously authorized plus the amount of the shares overissued, the shares so overissued are valid from the date of their issue;
 - (b) if a valid, identical share is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a share to him against surrender of the share which he holds;
 - (c) if a valid, identical share is not available for purchase the person entitled to issue or validation may recover from the issuer the price the last purchaser for value paid for the invalid share.
- (2) A purchase or payment by an issuer under paragraph (b) or (c) of subsection (1) is not a purchase or payment to which section 5.08, 5.09, 5.10 or 5.11 applies.
- Payment not a purchase or redemption

6.07

- In an action on a security,
- Burden of proof
- (a) unless specifically denied in the pleadings, each signature on the security or in a necessary endorsement is admitted;
 - (b) a signature on the security is presumed to be genuine and authorized, but if the effectiveness of the signature is put in issue the burden of establishing it is on the party claiming under the signature;
 - (c) if a signature is admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defence or a defect going to the validity of the security;
 - (d) the plaintiff has the burden of establishing that a defence or defect is ineffective against him or some person under whom he claims.

6.08

Unless otherwise agreed, and subject to any applicable law, regulation, or stock exchange rule, a person required to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him or in blank.

Securities fungible

6.09

Notice of
defect

(1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those incorporated therein by reference to another instrument, statute, rule, regulation or order to the extent that the terms so referred to do not conflict with the stated terms, but such a reference is not of itself notice to a purchaser for value of a defect going to the validity of the security, notwithstanding that the security expressly states that a person accepting it admits such notice.

Purchaser
for value
without
notice

(2) A security is valid in the hands of a purchaser for value without notice of any defect going to its validity.

Lack of
genuineness

(3) Except as provided in section 6.11, lack of genuineness of a security is a defence against a purchaser for value and without notice.

Ineffective
defences

(4) All other defences of an issuer, including non-delivery and conditional delivery of a security, are ineffective against a purchaser for value without notice of the particular defence.

6.10

Staleness
as notice
of defect

After an act or event which creates a right to immediate performance of the principal obligation evidenced by a security, or which sets a date on or after which a security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defence of the issuer, if

(a) the act or event is one requiring the payment of money or the delivery of securities, or both, on presentation or surrender of the security, and such funds or securities are available on the date set for payment or exchange, and he takes the security more than one year after that date, and

(b) in any other case, he takes the security more than 2 years after the date set for surrender or presentation or the date on which such performance became due.

6.11

Unauthorized
signature

An unauthorized signature on a security before or in the course of issue is ineffective, except that the signature is effective in favour of a purchaser for value and without notice of the lack of authority, if the signing has been done by

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing

of the security or of similar securities, or their immediate preparation for signing, or

- (b) an employee of the issuer or of a person referred to in paragraph (a) entrusted with responsible handling of the security.

6.12

- | | |
|--|-------------------------------------|
| <p>(1) If a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect</p> <p style="margin-left: 40px;">(a) any person may complete it by filling in the blanks as authorized, and</p> <p style="margin-left: 40px;">(b) notwithstanding that the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.</p> | <p>Completion or alteration</p> |
| <p>(2) A complete security which has been improperly altered, even if fraudulently altered, remains enforceable but only according to its original terms.</p> | <p>Enforce- ability</p> |

6.13

- | | |
|--|------------------------------------|
| <p>(1) A person signing a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice that</p> <ul style="list-style-type: none"> (a) the security is genuine, (b) his acts in connection with the issue of the security are within his authority, and (c) he has reasonable grounds for believing that the security is in the form and within the amount the issuer is authorized to issue. | <p>Warranties of agents</p> |
| <p>(2) Unless otherwise agreed, a person referred to in subsection (1) does not assume any further liability for the validity of a security.</p> | <p>Limitation of liability</p> |

6.14

- | | |
|---|------------------------------|
| (1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had authority to convey, except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. | Title of purchaser |
| (2) A bona fide purchaser, in addition to acquiring the rights of a purchaser, also acquires the security free from any adverse claim. | Title of bona fide purchaser |
| (3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased. | Limited interest |

6.15

Constructive
notice of
adverse claim

- (1) A purchaser of a security, including a broker for a seller or buyer, is deemed to have notice of an adverse claim if
 - (a) the security, whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer, or
 - (b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, except that the mere writing of a name on a security is not such a statement.
- (2) Notwithstanding that a purchaser, including a broker for the seller or buyer, has notice that a security is held for a third person or is registered in the name of or endorsed by a fiduciary, he has no duty to enquire into the rightfulness of the transfer and has no notice of an adverse claim, except that where a purchaser knows that the consideration is to be used or that the transaction is for the personal benefit of the fiduciary or is otherwise in breach of the fiduciary's duty, the purchaser is deemed to have notice of an adverse claim.

Notice of
fiduciary duty

6.16

Staleness
as notice
of adverse
claim

An act or event which creates a right to immediate performance of the principal obligation evidenced by a security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange is not of itself notice of an adverse claim, except in the case of a purchase

- (a) after one year from any date set for such presentment or surrender for redemption or exchange, or
- (b) after 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

6.17

Warranties
to issuer

- (1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange, except that a purchaser for value without notice of an adverse claim who receives a new, re-issued or re-registered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature in a necessary endorsement.

Warranties
to purchaser

- (2) A person by transferring a security to a purchaser for value warrants only that
 - (a) his transfer is effective and rightful,

- (b) the security is genuine and has not been materially altered, and
 - (c) he knows of nothing which might impair the validity of the security.
- (3) Where a security is delivered by an intermediary known by the purchaser to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even if he has purchased or made advances against the claim to be collected against the delivery. Warranties of intermediary
- (4) A pledgee or other holder for security who re-delivers a security received, or after payment and on order of the debtor delivers that security to a third person, gives only the warranties of an intermediary under subsection (3). Warranties of pledgee
- (5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section, which warranties of and in favour of the broker acting as an agent are in addition to applicable warranties given by and in favour of his customer. Warranties of broker

6.18

If a security in registered form has been delivered to a purchaser without a necessary endorsement he may become a bona fide purchaser only as of the time the endorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied. Right to compel endorsement

6.19

- (1) For the purposes of subsection (3), an “appropriate person” means Interpretation
“appropriate person”
- (a) the person specified by the security or by special endorsement to be entitled to the security,
 - (b) if the person so specified is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor,
 - (c) if the security or endorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified,

| | |
|--|---|
| | <p>(d) if the person so specified is an individual and is without capacity to act by reason of death, incompetence, infancy, minority or otherwise, his fiduciary,</p> <p>(e) if the security or endorsement so specifies more than one person with right of survivorship and by reason of death all cannot sign, the survivor or survivors,</p> <p>(f) a person having power to sign under applicable law or a power of attorney, or</p> <p>(g) to the extent that a person described in paragraphs (a) to (f) may act through an agent, his authorized agent.</p> |
| Determining "appropriate person" | (2) Whether the person signing is an appropriate person is determined as of the time of signing and an endorsement by such a person does not become unauthorized for the purposes of this Part by reason of any subsequent change of circumstances. |
| Endorsement | (3) An endorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it, or when the signature of such person is written without more upon the back of the security. |
| Blank or special | (4) An endorsement may be in blank or special. |
| Blank endorsement | (5) An endorsement in blank includes an endorsement to bearer. |
| Special endorsement | (6) A special endorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. |
| Right of holder | (7) A holder may convert a blank endorsement into a special endorsement. |
| Immunity of endorser | (8) Unless otherwise agreed the endorser by his endorsement assumes no obligation that the security will be honoured by the issuer. |
| Partial endorsement | (9) An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement. |
| Failure of fiduciary to comply | (10) Failure of a fiduciary to comply with a controlling instrument or with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his endorsement unauthorized for the purposes of this Part. |
| Effect of endorsement without delivery | <p>6.20</p> <p>An endorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which</p> |

it appears or, if the endorsement is on a separate document, until delivery of both the security and that document.

6.21

An endorsement of a security in bearer form may give notice of an adverse claim under section 6.15 but does not otherwise affect any right to registration the holder may possess.

Endorsement
in bearer
form

6.22

(1) The owner of a security may assert the ineffectiveness of an endorsement against the issuer or any purchaser, other than a purchaser for value and without notice of an adverse claim, who has in good faith received a new, re-issued or re-registered security on registration of transfer, unless the owner

Effect of
unauthorized
endorsement

(a) has ratified an unauthorized endorsement of the security, or

(b) is otherwise precluded from impugning the effectiveness of an unauthorized endorsement.

(2) An issuer who registers the transfer of a security upon an unauthorized endorsement is liable for improper registration.

Liability
of issuer

6.23

(1) A person who guarantees a signature of an endorser of a security warrants that at the time of signing

Warranties
of guarantor
of signature

(a) the signature was genuine,

(b) the endorser was an appropriate person as defined in section 6.19 to endorse, and

(c) the endorser had legal capacity to endorse.

(2) A person who guarantees a signature of an endorser does not otherwise warrant the rightfulness of the particular transfer.

Limitation
of liability

(3) A person who guarantees an endorsement of a security warrants both the signature and the rightfulness of the transfer in all respects, but an issuer may not require a guarantee of endorsement as a condition to registration of transfer.

Warranties
of guarantor
of endorsement

(4) The warranties referred to in this section are made to any person taking or dealing with the security relying on the guarantee and the guarantor is liable to such person for any loss resulting from breach of warranty.

Extent of
liability

6.24

(1) Delivery to a purchaser occurs if

(a) he or a person designated by him acquires possession of a security,

Constructive
delivery of
a security

- (b) his broker acquires possession of a security specially endorsed to or issued in the name of the purchaser,
- (c) his broker sends him confirmation of the purchase and the broker in his records identifies a specific security as belonging to the purchaser,
- (d) with respect to an identified security to be delivered while still in the possession of a third person, that person acknowledges that he holds for the purchaser, or
- (e) appropriate entries in the records of a clearing corporation are made under section 6.29.

Constructive ownership

- (2) A purchaser is the owner of a security held for him by his broker or by a clearing corporation, but a purchaser is not a holder except in the cases referred to in paragraphs (b), (c) and (e) of subsection (1).

Ownership of part of fungible bulk

- (3) If a security is part of a fungible bulk a purchaser of the security is the owner of a proportionate interest in the fungible bulk.

Notice to broker

- (4) Notice of an adverse claim received by a broker or by a purchaser after the broker takes delivery as a holder for value is not effective against the broker or the purchaser, except that, as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

6.25

Delivery of security

- (1) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers

- (a) the selling customer fulfils his duty to deliver when he delivers the security to the selling broker or to a person designated by the selling broker or causes an acknowledgment to be made to the selling broker that it is held for him, and

- (b) the selling broker, including a correspondent broker, acting for a selling customer fulfils his duty to deliver by delivering the security or a like security to the buying broker or to a person designated by the buying broker or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

Duty to deliver

- (2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he deliver

ers the security in negotiable form to the purchaser or to a person designated by the purchaser, or causes an acknowledgment to be made to the purchaser that the security is held for him.

- (3) A sale to a broker purchasing for his own account is made within subsection (2) and not within subsection (1), unless the sale is made on a stock exchange.
- Delivery to broker

6.26

- (1) A person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or claim damages.
- Right to reclaim possession
- (2) If the transfer of a security is wrongful by reason of an unauthorized endorsement, the owner may reclaim possession of the security or a new security even from a bona fide purchaser if the ineffectiveness of the purported endorsement can be asserted against him under section 6.22.
- Recovery if unauthorized endorsement
- (3) The right to reclaim possession of a security may be specifically enforced, its transfer may be enjoined, and the security may be impounded pending litigation.
- Powers of court

6.27

- (1) Unless otherwise agreed, a transferor shall on demand supply a purchaser with proof of his authority to transfer or with any other requisite that is necessary to obtain registration of the transfer of a security, but if the transfer is not for value a transferor need not do so unless the purchaser pays the reasonable and necessary transfer costs.
- Right to requisites for registration
- (2) If the transferor fails to comply with a demand under subsection (1) within a reasonable time the purchaser may reject or rescind the transfer.
- Rescission of transfer

6.28

No seizure of a security or other interest evidenced thereby is effective until the person making the seizure obtains possession of the security or until a court orders a clearing corporation to make appropriate entries in its records effecting transfer of the security from a holder to the person seizing.

Seizure of security

6.29

Transfer
or pledge
in central
depository
system

(1) If a security

- (a) is in the custody of a clearing corporation or a nominee subject to the instructions of the clearing corporation,
- (b) is in bearer form or endorsed in blank by an appropriate person or registered in the name of a clearing corporation or its nominee, and
- (c) is shown in the account of a transferor or pledgor in the records of a clearing corporation,

a transfer or pledge of the security or any interest therein may be effected by an entry in the records of the clearing corporation, reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the number or amount of shares or other securities transferred or pledged.

Entry in
records

- (2) An entry in the records of a clearing corporation that records a transfer or pledge of securities or interests therein as part of a fungible bulk may refer only to a quantity of a security without reference to the name of the registered owner, certificate, debenture or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

Constructive
transfer

- (3) A transfer or pledge entered in the records of a clearing corporation is deemed a delivery of a security in bearer form or duly endorsed in blank of the number or amount of shares or other securities transferred or pledged.

Constructive
delivery
to pledgee

- (4) A pledge or the creation of any other security interest entered in the records of a clearing corporation is deemed a taking of delivery by the pledgee or a secured party.

Holder

- (5) A transferee or pledgee under this section is a holder.

No registration
of transfer

- (6) A transfer or pledge under this section is not a registration of transfer under this Part.

Effect of
incorrect
entry

- (7) An incorrect entry in the records of a clearing corporation is effective but the clearing corporation remains liable to any person adversely affected thereby.

6.30

Duty of
issuer to
register
transfer

- (1) Where a security in registered form is presented for transfer the issuer shall register the transfer if

- (a) the security is endorsed by an appropriate person, as defined in section 6.19,

- (b) reasonable assurance is given that that endorsement is genuine and effective,
 - (c) the issuer has no duty to enquire into adverse claims or has discharged any such duty,
 - (d) any applicable law relating to the collection of taxes has been complied with,
 - (e) the transfer is rightful or is to a bona fide purchaser, and
 - (f) the fee referred to in subsection (2) of section 6.02 has been paid.
- (2) If an issuer has a duty to register a transfer of a security, the issuer is liable to the person presenting it for registration for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

Liability
for delay

6.31

- (1) An issuer may require the following assurance that each necessary endorsement on a security is genuine and effective:
- (a) In all cases, a guarantee of the signature of the person endorsing;
 - (b) If the endorsement is by an agent, appropriate assurance of authority to sign;
 - (c) If the endorsement is by a fiduciary, appropriate evidence of appointment or incumbency;
 - (d) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;
 - (e) In any other case, assurance that corresponds as closely as practicable to the foregoing.
- (2) For the purposes of subsection (1), a “guarantee of the signature” means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible.
- (3) An issuer may adopt reasonable standards to determine responsible persons for the purpose of subsection (2).
- (4) Appropriate evidence of appointment or incumbency in paragraph (c) of subsection (1) means
- (a) in the case of a fiduciary appointed by a court, a court certified copy of the order dated within 60 days before the date a security is presented for transfer, or
 - (b) in any other case, a copy of a document showing the appointment or other evidence reasonably believed by the issuer to be appropriate.

Assurance
that
endorsement
effective

“Guarantee of
signature”

Standards

Evidence
of appoint-
ment or
incumbency

Standards

(5) The issuer may adopt reasonable standards with respect to evidence for the purposes of subsection (4).

No notice
to issuer

(6) The issuer is deemed not to have notice of the contents of any document obtained pursuant to subsection (4) except to the extent that the contents relate directly to appointment or incumbency.

Notice from
excess docu-
mentation

(7) If an issuer demands assurance additional to that specified in this section for a purpose other than that specified in subsection (4) and obtains a copy of a will, trust or partnership agreement, by-laws or similar document, the issuer is deemed to have notice of all matters contained therein affecting the transfer.

6.32

Limited
duty of
enquiry

(1) An issuer to whom a security is presented for registration has a duty to enquire into adverse claims if

(a) written notice of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it before the issue of a new, re-issued or re-registered security and the notice discloses the name and address of the claimant, the registered owner and the issue of which the security is a part, or

(b) the issuer is deemed to have notice of an adverse claim from a document that it obtained under subsection (7) of section 6.31.

Discharge
of duty

(2) An issuer may discharge a duty of enquiry by any reasonable means, including notifying an adverse claimant by registered mail sent to the address furnished by him or, if no such address has been furnished, to his residence or regular place of business, that a security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notice, either

(a) the issuer has been served with a restraining order or other order of a court, or

(b) the issuer has been provided with an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer from any loss which it or they may suffer by complying with the adverse claim.

Enquiry
into
adverse
claims

(3) Unless an issuer is deemed to have notice of an adverse claim from a document that it obtained under subsection (7) of section 6.31 or has received notice of an adverse

claim under subsection (1), if a security presented for registration is endorsed by the appropriate person or persons the issuer has no duty to enquire into adverse claims, and in particular,

- (a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to enquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without enquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security,
 - (b) an issuer registering transfer on an endorsement by a fiduciary has no duty to enquire whether the transfer is made in compliance with the document or with the law of the jurisdiction governing the fiduciary relationship, and
 - (c) an issuer is deemed not to have notice of the contents of any court record or any registered document even if the record or document is in the issuer's possession and even if the transfer is made on the endorsement of a fiduciary to the fiduciary himself or to his nominee.
- (4) A written notice of adverse claim received by an issuer is effective for only 12 months from the date when it was received unless the notice is renewed in writing.

Duration
of notice

6.33

- (1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if
- (a) the necessary endorsements were on or with the security, and
 - (b) the issuer had no duty to enquire into adverse claims or discharged any such duty.
- (2) If an issuer has registered a transfer of a security to a person not entitled to it the issuer shall on demand deliver a like security to the owner unless
- (a) the transfer was registered pursuant to subsection (1),
 - (b) the owner is precluded by subsection (1) of section 6.34 from asserting any claim, or
 - (c) such delivery would result in overissue, in which case the issuer's liability is governed by section 6.06.

Limitation
of issuer's
liability

Duty of
issuer in
default

6.34

Notice of
lost or
stolen
security

- (1) Where a security has been lost, apparently destroyed or wrongfully taken, if the owner fails to notify the issuer of that fact by giving the issuer written notice of his adverse claim within a reasonable time after he has notice of it, and if the issuer has registered a transfer of the security before receiving such notice, the owner is precluded from asserting against the issuer any claim to a new security.

Duty of
issuer to
issue a new
security

- (2) If the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer shall issue a new security in place of the original security if the owner
 - (a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser,
 - (b) furnishes the issuer with a sufficient indemnity bond, and
 - (c) satisfies any other reasonable requirements imposed by the issuer.

Duty to
register
transfer

- (3) If, after the issue of a new security under subsection (2), a bona fide purchaser of the original security presents the original security for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which case the issuer's liability is governed by section 6.06.

Right of
issuer to
recover

- (4) In addition to any rights on an indemnity bond, the issuer may recover a new security issued under subsection (2) from the person to whom it was issued or any person taking under him except a bona fide purchaser.

6.35

Agent's
duties,
rights, etc.

- (1) An authenticating trustee, transfer agent, registrar, or other agent for an issuer has in respect of the issue, registration of transfer, and cancellation of a security of the issuer
 - (a) a duty to the issuer to exercise good faith and reasonable diligence, and
 - (b) the same obligations to the holder or owner of a security and the same rights, privileges and immunities as the issuer.

Notice to
agent

- (2) Notice to an authenticating trustee, transfer agent, registrar or other agent for an issuer is notice to the issuer with respect to the functions performed by the agent.

PART **7.00**

Trust Indentures

Interpretation
¶ 176 to 182
“trustee”

7.01

(1) In this Part,

- (a) “trustee” means any person named as trustee under the terms of a trust indenture to which a corporation is a party and includes any successor trustee;
- (b) “trust indenture” means any deed, indenture or document made after the coming into force of this Act, however designated, including any supplement or amendment thereto, under which a corporation issues or guarantees debt obligations and in which a person is named as trustee for the holders of the securities issued thereunder.

“trust
indenture”

Conflict of
interest

(2) For the purposes of this Part, conflict of interest is a question of fact.

7.02

Eliminating
conflict of
interest

¶ 181

(1) No person shall be appointed a trustee under a trust indenture if a conflict of interest exists in the trustee’s role as a fiduciary thereunder, and a trustee shall, within 90 days after he becomes aware that a conflict of interest exists, eliminate such conflict of interest or resign from office, which resignation takes effect when a successor trustee has been appointed.

Exemption
order

(2) Any person may apply to a court for an order that he is eligible to act as a trustee notwithstanding a conflict of interest, and the court may, if it is satisfied that the conflict of interest would not unfairly prejudice the holders of securities issued under the trust indenture, make an order on such terms as it thinks fit, which order may have retrospective effect.

Validity

(3) A security issued under a trust indenture is valid notwithstanding a conflict of interest under subsection (1).

7.03

Trustee in
public dis-
tribution

If a corporation proposes to distribute to the public securities that are issued under a trust indenture, the trustee shall be a trust corporation incorporated under the laws of the Parliament of Canada or a province.

7.04

List of
security
holders

A holder of a security issued under a trust indenture may, upon payment of a reasonable fee, require the trustee to furnish within 10 days a list setting out the names of all registered holders of securities issued under the trust indenture, the

number and amount of the security owned by each such holder, and the address of each such holder as shown on the most recent records of the trustee.

7.05

- | | |
|--|---------------------------------|
| (1) In this section, "corporation" means a corporation that has issued securities under or guaranteed obligations governed by a trust indenture. | Interpretation "corporation" |
| (2) Every trust indenture is deemed to contain the following provisions: | Statutory conditions |
| (a) Upon the demand of the trustee, the corporation or a registrar appointed under the trust indenture shall forthwith furnish to him the names and addresses of registered holders of securities issued under the trust indenture; | ¶ 182 |
| (b) Upon the demand of the trustee, the corporation or a registrar appointed under the trust indenture shall forthwith furnish to him evidence of compliance with every term of the trust indenture relating to, | |
| (i) the certification and delivery of securities, | |
| (ii) the validity of any mortgage, hypothec, charge, lien or other security interest, | |
| (iii) the release or substitution of property subject to any mortgage, hypothec, charge, lien or other security interest, | |
| (iv) the satisfaction and discharge of the liabilities created by the trust indenture, | |
| (v) the issue of any additional securities, whether issued under the trust indenture or not, and | |
| (vi) any other action required or permitted to be taken by the trustee; | |
| (c) The trustee shall give to the holders of securities issued under the trust indenture, within 30 days after the trustee becomes aware of the occurrence thereof, notice of every event of default arising under the trust indenture known to the trustee unless the trustee in good faith determines that it is in the best interests of the holders of the securities to withhold such notice and so informs the corporation in writing; | |
| (d) Any other provisions prescribed by regulation. | |

7.06

| | |
|--|------------------------|
| Evidence of compliance as required by paragraph (b) of subsection (2) of section 7.05 shall consist of | Evidence of compliance |
|--|------------------------|

- (a) affidavits made by directors or officers of the corporation authorized by the trust indenture and an opinion of legal counsel to the effect that the terms of the trust indenture have been complied with,
- (b) a report of the auditor of the corporation, or of another accountant selected by the trustee, in respect of any term compliance with which is subject to review by an auditor or accountant, and
- (c) a report of an appraiser, engineer or other expert in respect of any term compliance with which is subject to review by any such person.

7.07

Contents
of declara-
tion, etc.

An affidavit, opinion or report required under section 7.06 shall include a statement by the person making or giving the affidavit, opinion or report

- (a) declaring that he has read and understands the terms of the trust indenture,
- (b) describing the nature and scope of the examination or investigation upon which the statements contained in the affidavit, opinion or report are based,
- (c) declaring that he has made the examination or investigation that he believes is necessary to enable him to say that the statements of fact contained therein are true and to express the opinions given therein, and
- (d) where the affidavit, opinion, or report is required under paragraph (a) of section 7.06, stating whether in the opinion of such person the terms of the trust indenture have been complied with.

7.08

Further
evidence of
compliance

Notwithstanding anything in this Part, a trust indenture may include provisions requiring evidence of compliance additional to those specified in paragraph (b) of subsection (2) of section 7.05.

7.09

Duty of
care

A trustee shall in exercising his powers and discharging his duties

- (a) act honestly and in good faith with a view to the best interests of the holders of the securities issued under the trust indenture, and
- (b) exercise the care, diligence and skill of a reasonably prudent person.

7.10

Notwithstanding section 7.09, a trustee is not liable if he relies and acts in good faith upon statements contained in an affidavit, opinion or report furnished to him under paragraph (b) of subsection (2) of section 7.05.

Reliance on
statements

7.11

No term of a trust indenture shall relieve a trustee from the duties imposed upon him by section 7.09.

No excul-
pation

PART **8.00**

Receivers and Receiver-Managers

8.01

The following persons are disqualified from being a receiver or receiver-manager of a corporation:

- (a) Anyone who is less than 21 years of age;
- (b) Anyone found by a court in Canada or elsewhere to be of unsound mind;
- (c) A body corporate, except a trust corporation incorporated under the laws of the Parliament of Canada or a province;
- (d) An undischarged bankrupt, unless he has been permitted to be a receiver or receiver-manager by the court by which he was declared bankrupt;
- (e) A director or auditor of the corporation or any of its affiliates, or a person who has been a director or auditor of any such body corporate within the preceding 2 years;
- (f) Unless a court orders otherwise, a trustee under a trust indenture to which the corporation is a party and to which Part 7.00 applies.

8.02

A receiver of any property of a corporation may, subject to the rights of secured creditors, receive all income from the property and pay all liabilities connected with the property and realize the security interest of those on behalf of whom he is appointed, but he may not carry on any business of the corporation.

8.03

A receiver of any property of a corporation may, if he is also appointed receiver-manager of the corporation, carry on any business of the corporation to protect the security interest of those on behalf of whom he is appointed.

8.04

If a receiver-manager is appointed, either by a court order or under an instrument, the powers of the directors of the corporation shall cease until the receiver-manager is discharged.

8.05

A receiver or receiver-manager appointed by a court is deemed to be an officer of the court and not of the corporation, and he shall act in accordance with the directions of the court.

8.06

A receiver or receiver-manager appointed under an instrument is deemed to be an officer of the corporation and not an agent

of the persons by or on behalf of whom he is appointed, and he shall act in accordance with the instrument under which he is appointed and under any directions of a court made under section 8.09.

8.07

A receiver or receiver-manager appointed under an instrument shall stand in a fiduciary relationship to the corporation, and section 9.19 shall apply to a receiver and receiver-manager as if he were a director of the corporation, except that he may give special consideration to the interests of the persons by or on behalf of whom he is appointed.

Duty of care

¶ 186

8.08

A receiver or receiver-manager is not personally liable on any contract made by him on behalf of a corporation if he discloses in the contract that he acts in that capacity.

Limitation on personal liability

¶ 187

8.09

A receiver or receiver-manager, whether appointed by a court or under an instrument, may apply to a court for directions on any matter arising in connection with the performance of his duties, and upon such application the court may give directions, declare the rights of persons before the court, or make any further order it thinks fit.

Directions by court

¶ 187

8.10

Upon an application by the corporation or one of the persons by or on behalf of whom a receiver or receiver-manager is appointed, or by the receiver or receiver-manager, a court may

Further powers of court

¶ 188

- (a) fix the remuneration of the receiver or receiver-manager, and
- (b) order the receiver or receiver-manager to make good any default in connection with his custody or management of the property and business of the corporation.

8.11

Upon his appointment a receiver or receiver-manager shall

Duties of receiver and receiver-manager

¶ 189, 190

- (a) immediately notify the Registrar of his appointment,
- (b) take into his custody and control the property of the corporation in accordance with the court order or instrument under which he is appointed,
- (c) open and maintain a bank account in his name as receiver or receiver-manager of the corporation for the moneys of the corporation coming under his control,

- (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager,
- (e) keep accounts of his administration that shall be available during usual business hours for inspection by the directors and shareholders of the corporation and other interested persons,
- (f) prepare at least once in every six-month period after the date of his appointment financial statements of his administration as far as is practicable in the form required by section 13.01, and
- (g) upon completion of his duties, render a final account of his administration in the form adopted for interim accounts under paragraph (f).

PART 9.00

Directors and Officers

9.01

Power to manage

¶ 191, 192

Limitation upon authority of directors

¶ 193

- (1) Subject to the articles, the by-laws and any unanimous shareholder agreement, the business and affairs of a corporation shall be managed by one or more directors.
- (2) No limitation upon the authority of directors, whether contained in the articles, by-laws or a unanimous shareholder agreement, shall be effective against persons who do not have knowledge of such limitations.

9.02

By-laws

¶ 194, 195, 196

Shareholder approval

Effective date

Effective date

Shareholder proposal

- (1) Unless the articles otherwise provide, the directors may adopt, amend or repeal any by-laws to regulate the affairs of the corporation.
- (2) The directors shall submit any by-law adopted, amended or repealed under subsection (1) to the next meeting of shareholders, at which the shareholders shall by ordinary resolution confirm, reject or amend such by-law.
- (3) A by-law is effective from the date of its adoption, amendment or repeal under subsection (1) until it is confirmed, rejected or amended under subsection (2).
- (4) A by-law confirmed or amended under subsection (2) continues to be effective from the date of its confirmation or amendment but, if the by-law is not confirmed or amended under subsection (2), no subsequent by-law or amendment or repeal of a by-law having substantially the same purpose or effect is effective until it is confirmed or amended at a meeting of shareholders.
- (5) A shareholder may, in accordance with section 11.05, propose the adoption, amendment or repeal of any by-law.

9.03

Organization meeting

¶ 197, 198

- (1) After issue of the certificate of incorporation a meeting of the first directors of the corporation shall be held at which the first directors may
 - (a) adopt by-laws,
 - (b) adopt a seal, forms of security certificates and corporate records,
 - (c) authorize the issue of share certificates to shareholders,
 - (d) appoint officers,
 - (e) appoint an auditor to hold office until the first annual meeting of shareholders,
 - (f) make banking arrangements, and
 - (g) transact such other business that may come before the meeting.

| | |
|---|------------------|
| (2) An incorporator or a first director may call a meeting of the first directors by giving not less than 5 days' notice thereof by prepaid mail to each first director, stating the time and place of the meeting. | Calling meeting |
| (3) A first director may waive notice of a meeting of first directors. | Waiver of notice |
| (4) If there are more than two first directors, a majority of the directors shall constitute a quorum and an act of the majority of the quorum is deemed to be an act of the first directors. | Quorum |
| (5) A resolution in writing signed by each first director entitled to receive notice of a meeting of first directors shall be as valid as if it had been passed at a meeting of the first directors duly convened and held. | Resolutions |

9.04

| | |
|---|-----------------------------|
| (1) The following persons are disqualified from being a director of a corporation: | Qualifications of directors |
| (a) Anyone who is less than 21 years of age; | ¶ 199 |
| (b) Anyone found by a court in Canada or elsewhere to be of unsound mind; | |
| (c) A body corporate; | |
| (d) An undischarged bankrupt, unless he has been permitted to be a director by the court by which he was declared bankrupt. | |
| (2) Unless the articles otherwise provide, a director of a corporation is not required to | Further qualifications |
| (a) hold shares issued by the corporation, or | ¶ 200, 201 |
| (b) be a citizen of or resident in Canada. | |

9.05

| | |
|--|--------------------------------|
| (1) At the time of delivering articles of incorporation the incorporators shall deliver to the Registrar a notice in prescribed form showing the name, address and occupation of each first director of the corporation and each director so named shall hold office until the first meeting of shareholders. | First directors ¶ 202 |
| (2) Subject to paragraph (b) of section 9.06, shareholders of a corporation shall by ordinary resolution, at the first meeting of shareholders and at each succeeding annual meeting, elect one or more directors to hold office for a term expiring no later than the close of the third annual meeting of shareholders following the election. | Election of directors ¶ 203 |
| (3) It is not necessary that all directors elected at a meeting of shareholders hold office for the same term. | Staggered terms |

No stated
terms

(4) A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his election.

Incumbent
directors

(5) Notwithstanding subsections (1), (2) and (4), if directors are not elected at a meeting of shareholders the incumbent directors shall continue in office until their successors are elected.

Vacancy
among
candidates

(6) If a meeting of shareholders fails to elect the number or the minimum number of directors required by the articles by reason of the disqualification, incapacity or death of any candidates, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum.

¶ 204

9.06

Cumulative
voting

Unless the articles expressly exclude cumulative voting,

¶ 205, 206
207, 210, 216

- (a) the articles shall require a fixed number and not a minimum and maximum number of directors,
- (b) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him multiplied by the number of directors to be elected, and he may cast all such votes in favour of one candidate or distribute them among the candidates in any manner,
- (c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution,
- (d) if a shareholder has voted for more than one candidate without specifying the distribution of his votes among the candidates, he is deemed to have distributed his votes equally among the candidates for whom he voted,
- (e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled,
- (f) each director ceases to hold office at the close of the first annual meeting of shareholders following his election,

- (g) a director may not be removed from office where the votes cast against his removal would be sufficient to elect him if such votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected, and
- (h) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director if such votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

9.07

- | | |
|---|-------------------------------|
| (1) Notwithstanding subsections (1) to (5) of section 9.05, a director of a corporation ceases to hold office when | Ceasing to hold office |
| (a) he dies or resigns, | |
| (b) he is removed in accordance with section 9.08, or | ¶ 208 |
| (c) he becomes disqualified under section 9.04. | |
| (2) A resignation of a director becomes effective at the time a written resignation is delivered to the corporation, or at the time specified in the resignation, whichever is later. | Effective date of resignation |

9.08

- | | |
|---|---|
| (1) Subject to subsection (2) and paragraph (g) of section 9.06, the shareholders of a corporation may by ordinary resolution at a special meeting remove any director or directors from office. | Removal of directors ¶ 209, 210, 211 |
| (2) Notwithstanding subsection (1), if the holders of any class or series of shares have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series. | Exception ¶ 211 |
| (3) Subject to paragraphs (b) to (e) of section 9.06, a vacancy created by the removal of a director may be filled at the meeting at which the director is removed or, if not so filled, may be filled under section 9.10. | Vacancy |

9.09

- | | |
|---|--------------------------------|
| (1) A director of a corporation is entitled to receive notice of and to attend and be heard at every meeting of shareholders. | Attendance at meeting ¶ 211 |
| (2) A director who | Statement of director |

- (a) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office,
- (b) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of the resignation or removal of the incumbent director or because his term of office has expired or is about to expire, or
- (c) who resigns

is entitled to submit to the corporation a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

Circulating
statement

- (3) The corporation shall forthwith send a copy of the statement referred to in subsection (2) to every shareholder entitled to receive notice of any meeting referred to in subsection (1) unless the statement has already been included in a management proxy circular required by section 12.04.

Immunity

- (4) No corporation or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

9.10

Filling
vacancy

¶ 212, 215

- (1) Subject to subsections (3) and (4), a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from an increase in the number or minimum number of directors or from a failure to elect the number or minimum number of directors required by the articles.

Calling
meeting

¶ 213

- (2) If there is not a quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the director or directors then in office shall forthwith call a special meeting of shareholders to fill the vacancies and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

Class
director

¶ 213

- (3) Notwithstanding subsection (1), if the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors and a vacancy occurs among those directors,
 - (a) subject to subsection (4), the remaining directors or director elected by that class or series may fill the vacancy, or

| | |
|---|--|
| (b) if there is no such remaining director any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy. | Shareholders filling vacancy |
| (4) Notwithstanding subsection (1) or paragraph (a) of subsection (3), the articles may provide that vacancies among the directors shall only be filled by a vote of the shareholders, or by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series. | ¶ 214 |
| (5) A director appointed or elected to fill a vacancy shall hold office for the unexpired term of his predecessor. | Unexpired term |
| 9.11 | ¶ 214 |
| The shareholders of a corporation may amend the articles to increase or, subject to paragraph (h) of section 9.06, to decrease the number of directors, or the minimum or maximum number of directors, but no decrease shall shorten the term of an incumbent director. | Number of directors ¶ 213, 215, 216 |
| 9.12 | |
| (1) A corporation shall deliver to the Registrar a notice in prescribed form showing any change among the directors within 15 days after the change is made. | Notice of change of directors ¶ 217 |
| (2) Any interested person, or the Registrar, may apply to a court for an order to require a corporation to comply with subsection (1), and the court may so order and make any further order it thinks fit. | Application to court |
| 9.13 | |
| (1) Unless the articles otherwise provide, the directors may meet at any place, and upon such notice as the by-laws require. | Meeting of directors ¶ 218 |
| (2) Subject to subsection (4) of section 9.17, and unless the articles or by-laws require a greater proportion, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors. | Quorum |
| (3) Unless the by-laws otherwise provide and subject to subsection (6), a notice of a meeting of directors is not required to specify the purpose of or the business to be transacted at the meeting. | Notice of meeting |
| (4) A director may in any manner waive notice of a meeting of directors, and attendance of a director at a meeting of | Waiver of notice |

directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called.

- | | |
|----------------------|--|
| Adjournment | (5) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting. |
| Contents of notice | (6) Notwithstanding subsection (3), a notice of a meeting of directors shall specify any matter referred to in subsection (2) of section 9.14 that is to be dealt with at the meeting. |
| One director meeting | (7) If a corporation has only one director that director may constitute a meeting. |

9.14

- | | |
|------------------------------|---|
| Delegation ¶ 219 | (1) Directors of a corporation may appoint from their number a managing director or committees of directors and, subject to subsection (2), delegate to such managing director or committees any of the powers of the directors. |
| Limits on authority ¶ 220 | (2) Notwithstanding subsection (1), no managing director and no committee of directors shall have authority to <ol style="list-style-type: none">submit to the shareholders any question or matter requiring the approval of the shareholders,fill a vacancy among the directors, in a committee of directors, or in the office of auditor,appoint, reappoint, dismiss or fix the remuneration of any director or officer of the corporation,declare dividends or issue securities,purchase, redeem or otherwise acquire shares issued by the corporation or by its holding body corporate,pay a commission referred to in section 5.13,make a loan or give a guarantee or financial assistance referred to in section 5.16,approve a management proxy circular referred to in Part 12.00,approve a take-over bid circular or directors' circular referred to in Part 16.00,approve any financial statements to be sent to shareholders or placed before any meeting of shareholders, oradopt, amend or repeal by-laws. |
| Directors liability ¶ 221 | (3) The appointment of a managing director or committee of directors shall not relieve the directors of a corporation from any liability imposed by law. |

9.15

- (1) Except where section 13.14 requires a meeting to be held, a resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, shall be as valid as if it had been passed at a meeting of directors or committee of directors. Resolution in lieu of meeting ¶ 222
- (2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors. Filing resolution

9.16

- (1) Directors of a corporation who vote for or consent to a resolution authorizing the issue of a security under section 5.02 for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money which the corporation would have received if the security had been issued for money. Directors liability ¶ 223
- (2) Directors of a corporation who vote for or consent to a resolution authorizing
- (a) a purchase, redemption or other acquisition of shares contrary to section 5.08, 5.09 or 5.10,
 - (b) a commission, discount or allowance contrary to section 5.13,
 - (c) a payment of a dividend contrary to section 5.14,
 - (d) a loan, guarantee or financial assistance contrary to section 5.16,
 - (e) a payment of an indemnity contrary to section 9.20,
 - (f) a payment to a shareholder contrary to section 14.17 or 19.04, or
 - (g) an act contrary to section 3.02 and in respect of which the corporation has paid compensation to any person,
- are jointly and severally liable to restore to the corporation any amounts so distributed or paid and not otherwise recovered by the corporation. Further directors liabilities ¶ 142, 146, 223
- (3) A director who is present at a meeting of directors is deemed to have consented to any resolution passed thereat unless Dissent
- (a) his dissent is entered in the minutes of the meeting,
 - (b) he delivers his written dissent to the secretary of the meeting before its adjournment, or
 - (c) he delivers or sends his dissent by registered mail to the registered office of the corporation immediately after the adjournment of the meeting.

| | |
|--|--|
| Loss of right to dissent | (4) A director who votes for or consents to a resolution is not entitled to dissent under subsection (3). |
| Absent director's dissent | (5) A director who was not present at a meeting of directors at which a resolution relating to a matter referred to in subsection (2) of section 9.14 was passed is deemed to have consented thereto unless within 7 days after he becomes aware of the resolution he <ul style="list-style-type: none"> (a) causes his dissent to be placed with the minutes of the meeting, or (b) delivers or sends his dissent by registered mail to the registered office of the corporation. |
| ¶ 224 | |
| Contribution | (6) A director who has satisfied a judgment rendered under this section is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded. |
| ¶ 225 | |
| Recovery | (7) A director liable under subsection (2) is entitled to recover from any shareholder or other recipient who knew or ought reasonably to have known that the payment or distribution was contrary to section 5.08, 5.09, 5.10, 5.13, 5.14, 5.16, 9.20, 14.17 or 19.04. |
| No liability | (8) A director is not liable under subsection (1) if he proves that he did not know and could not reasonably have known that the security was issued for a consideration less than the fair equivalent of the money that the corporation would have received if the security had been issued for money. |
| Reliance on statements | (9) A director is not liable under subsection (2) if he relies and acts in good faith upon financial statements of the corporation represented to him by an officer of the corporation to be correct or stated in a written report of the auditor of the corporation fairly to reflect the financial condition of the corporation. |
| Time limit | (10) An action to enforce a liability imposed by this section may not be commenced after 2 years from the date of the resolution authorizing the action complained of. |
| | 9.17 |
| Disclosure of interested director's contract | (1) A director of a corporation who <ul style="list-style-type: none"> (a) is a party to a contract or proposed contract with the corporation, or (b) is a director or officer of or has a material interest in any person that is a party to a contract or proposed contract with the corporation, shall disclose in writing the nature and extent of his interest at any meeting of directors or shareholders at which the contract is to be approved. |
| ¶ 226, 227, 228, 229 | |

- | | |
|--|--|
| <p>(2) The disclosure required by subsection (1) shall be made</p> <ul style="list-style-type: none"> (a) at the meeting at which a proposed contract is first considered, (b) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested, (c) if the director becomes interested after a contract is made, at the first meeting held after the director becomes so interested, or (d) if a contract or proposed contract is one that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, at the first meeting held after the director becomes aware of it. | <p>Time of disclosure ¶ 230</p> |
| <p>(3) A director referred to in subsection (1) is liable to account for any profit made on the contract unless</p> <ul style="list-style-type: none"> (a) he disclosed his interest in accordance with subsection (2), (b) after such disclosure the contract was approved by the directors or the shareholders, and (c) he establishes that the contract was reasonable and fair to the corporation at the time it was approved. | <p>Accounting for profits</p> |
| <p>(4) A director referred to in subsection (1) shall not be counted in the quorum and shall not vote at any meeting of directors which approves the contract unless the contract is</p> <ul style="list-style-type: none"> (a) an arrangement by way of security for money lent to or obligations undertaken by him for the benefit of the corporation, or (b) one relating solely to his remuneration as a director, officer or employee of the corporation. | <p>Quorum and voting ¶ 231</p> |
| <p>(5) For the purposes of this section a general notice to the directors by a director, declaring that he is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the corporation, is a sufficient declaration of interest in relation to any contract so made.</p> | <p>Continuing disclosure ¶ 232</p> |
| <p>(6) Upon the application of a corporation or any interested person a court may set aside a contract in respect of which a director has not complied with this section, and may make any further order it thinks fit.</p> | <p>Application to court ¶ 233</p> |

9.18

Subject to the articles, the by-laws, or a unanimous shareholder agreement:

Officers
¶ 234, 235

- (a) The directors may designate the offices of the corporation, appoint as officers persons of full capacity, specify their duties, and delegate to them any powers that the directors may lawfully delegate;
- (b) A director may be appointed to any office or offices of the corporation;
- (c) Two or more offices of the corporation may be held by the same person.

9.19

Duty of
care

¶ 236 to 242

- (1) Every director and officer of a corporation in exercising his powers and discharging his duties shall
 - (a) act honestly and in good faith with a view to the best interests of the corporation, and
 - (b) exercise the care, diligence and skill of a reasonably prudent person.

Duty to
comply

- (2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement.

No
exculpation

- (3) No provision in a contract, the articles, the by-laws or a resolution shall relieve an officer or director from the duty to act in accordance with this Act or the regulations or relieve him from liability for a breach thereof.

9.20

Indemnifi-
cation

¶ 243 to 246

- (1) Subject to this section, a corporation may with the approval of a court indemnify a director or officer, a former director or officer or a person who acts or acted at the corporation's request as a director or officer of a body corporate of which it is or was a shareholder or creditor, and his heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of such corporation or body corporate, if
 - (a) the director or officer acted honestly and in good faith with a view to the best interests of the corporation, and
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

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|---|--|
| <p>(2) A corporation may with the approval of a court indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, to which he is made a party by reason of being or having been a director or officer of the corporation or body corporate, against all costs, charges and expenses actually and reasonably incurred by him in connection with such action if he fulfils the conditions of subsection (1).</p> | <p>Indemnification for costs ¶ 247</p> |
| <p>(3) Notwithstanding anything in this section, a corporation shall indemnify any person referred to in subsection (1) who has been wholly successful in the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the corporation or body corporate against all costs, charges and expenses actually and reasonably incurred by him in respect of such action or proceeding.</p> | <p>Right to indemnify ¶ 248</p> |
| <p>(4) A corporation may purchase and maintain insurance for the benefit of any person referred to in this section against any liability incurred by him</p> <p style="padding-left: 40px;">(a) under paragraph (b) of subsection (1) of section 9.19 in his capacity as a director or officer of the corporation, and</p> <p style="padding-left: 40px;">(b) under any other law in respect of a breach of fiduciary duty in his capacity as a director or officer of another body corporate,</p> <p style="padding-left: 40px;">whether or not the corporation could indemnify him against such liability under this section.</p> | <p>Directors and officers insurance ¶ 249 to 251</p> |
| <p>(5) A corporation or a director may apply to a court for an order approving an indemnity under this section and the court may so order and make any further order it thinks fit.</p> | <p>Application to court</p> |
| <p>(6) An applicant under subsection (5) shall give the Registrar not less than 10 days notice of the application and the Registrar is entitled to appear in person or by counsel and to be heard.</p> | <p>Notice to Registrar ¶ 248</p> |
| <p>(7) Upon an application under subsection (5) the court may order notice to be given to any interested person and such person is entitled to appear in person or by counsel and to be heard.</p> | <p>Other notice ¶ 248</p> |

9.21

Unless the articles, the by-laws or a unanimous shareholder agreement otherwise provide, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation.

Remuneration
¶ 252

PART 10.00

Insider Trading

10.01**(1) In this Part,**

(a) “corporation” means a body corporate incorporated under the laws of the Parliament of Canada or continued under this Act and not discontinued under this Act,

(i) any of the issued securities of which are or were part of a distribution to the public, or

(ii) any of the shares of which are listed or posted for trading on a recognized stock exchange;

(b) “insider” means

(i) a director or officer of a corporation,

(ii) a corporation that purchases or otherwise acquires, except under section 5.10, shares issued by it or by any of its affiliates, or

(iii) a person who beneficially owns or who controls, directly or indirectly, more than 10 per cent of the shares of a corporation, excluding shares owned by an underwriter under an underwriting agreement while those shares are in the course of a distribution to the public;

(c) “share” means a share or a security convertible into a share carrying voting rights under all circumstances or by reason of the occurrence of a contingency that has occurred and is continuing, and includes options and rights to purchase such a share or such a convertible security.

(2) For the purposes of this Part,

(a) a director or officer of a body corporate that is an insider of a corporation is deemed to be an insider of the corporation,

(b) a director or officer of a body corporate that is a subsidiary is deemed to be an insider of its holding corporation,

(c) an individual is deemed to own beneficially securities beneficially owned by a body corporate controlled by him directly or indirectly,

(d) a body corporate is deemed to own beneficially securities beneficially owned by its affiliates, and

(e) the acquisition or disposition by an insider of a call, put, other transferable option or right to purchase with respect to a security is deemed to be a change in the beneficial ownership of the security to which the call,

put, other transferable option or right to purchase relates.

- (3) (a) In this subsection “business combination” includes an acquisition of all or substantially all the property of one body corporate by another and an amalgamation of two or more bodies corporate. Inter-pretation “business combination”
- (b) For the purposes of this Part, Further inter-pretation
 - (i) if a body corporate becomes an insider of or enters into a business combination with a corporation, a director or officer of the body corporate is deemed to have been an insider of the corporation for the previous 6 months or for such shorter period as he was a director or officer of the body corporate, and
 - (ii) if a corporation becomes an insider of or enters into a business combination with a body corporate, a director or officer of the body corporate is deemed to have been an insider of the corporation for the previous 6 months or for such shorter period as he was a director or officer of the body corporate.

10.02

- (1) A person who is an insider of a body corporate on the day on which it is continued as a corporation under this Act shall, within 10 days after the end of the month in which such day occurs, send to the Registrar an insider report in prescribed form. First insider report ¶ 254 to 258
- (2) A person who becomes an insider shall, within 10 days after the end of the month in which he becomes an insider, send to the Registrar an insider report in prescribed form. First insider report
- (3) A person who is deemed an insider under subsection (3) of section 10.01 shall, within 10 days after the end of the month in which he is deemed to become an insider, send to the Registrar the insider reports for the period in respect of which he is deemed an insider that he would have been required to send under this section if he had been an insider for such period. Constructive insider report
- (4) An insider whose interest in securities of a corporation changes from that shown or required to be shown in the last insider report sent or required to be sent by him shall, within 10 days after the end of the month in which such change takes place, send to the Registrar an insider report in prescribed form. Subsequent insider reports

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| One insider report | (5) An insider report of an individual that includes securities deemed to be beneficially owned by the individual is deemed to be an insider report of a body corporate referred to in paragraph (c) of subsection (2) of section 10.01 and the body corporate is not required to send a separate insider report. |
| One insider report | (6) An insider report of a body corporate that includes securities deemed to be beneficially owned by the body corporate is deemed to be an insider report of an affiliate referred to in paragraph (d) of subsection (2) of section 10.01 and the affiliate is not required to send a separate insider report. |
| Contents | <p>(7) An insider report of a person that includes securities deemed beneficially owned by that person shall disclose separately</p> <p>(a) the number or amount of the securities owned by a body corporate, and</p> <p>(b) the name of the body corporate.</p> |
| Exemption order | (8) Upon the application of an insider the Registrar may make an order on such terms as he thinks fit exempting the insider from any of the requirements of this section, which order may have retrospective effect. |
| Offence | (9) A person who fails to comply with this section is guilty of an offence and, if the person is a body corporate, a director or officer of the body corporate who knowingly authorizes, permits or acquiesces in such failure is also guilty of an offence. |

10.03

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|-------------------|--|
| Publication ¶ 256 | The Registrar shall summarize in or as part of a periodical for distribution to the public the information contained in insider reports sent to him under section 10.02 and the particulars of exemptions granted under subsection (8) of that section together with the reasons therefor. |
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10.04

| | |
|------------------------------|---|
| Civil liability ¶ 259 to 264 | (1) An insider, a person employed or retained by a corporation, and an associate or affiliate of an insider who, in connection with a transaction in a security of the corporation or any of its affiliates, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security, is liable to compensate any person for any direct loss suffered by that person as a |
|------------------------------|---|

result of the transaction, unless the information was known or in the exercise of reasonable diligence could have been known to that person at the time of the transaction.

- (2) An action to enforce a right created by subsection (1) may be commenced only within 2 years after the date of completion of the transaction that gave rise to the cause of action or, if the transaction was required to be reported under section 10.02, then within 2 years from the time of reporting under that section. Limitation

10.05

- (1) An insider shall not knowingly sell, directly or indirectly, a security of the corporation or any of its affiliates if the insider selling the security Prohibition of short sale
(a) does not own the security to be sold, or ¶ 265
(b) owns the security but fails without reasonable excuse to mail or deliver it within 10 days after the sale.
- (2) An insider shall not, directly or indirectly, buy a put or call in respect of a security of the corporation or any of its affiliates. Puts and calls
- (3) Notwithstanding subsection (1), an insider may sell a security he does not own if he owns another security convertible into the security sold or an option or right to purchase the security sold and, within 10 days after the sale, he Exception
(a) exercises the conversion privilege, option or right to purchase and delivers the security so acquired to the purchaser, or
(b) transfers the convertible security, option or right to purchase to the purchaser.
- (4) An insider who contravenes subsection (1) or (2) is guilty of an offence. Offence

PART 11.00

Shareholders

11.01

Place of
meetings

¶ 266

Meeting
outside
Canada

- (1) Subject to subsection (2), meetings of shareholders of a corporation shall be held at the place within Canada provided in the by-laws or, in the absence of such provision, at the place within Canada that the directors determine.
- (2) Notwithstanding subsection (1), a meeting of shareholders of a corporation may be held outside Canada if all the shareholders entitled to vote at that meeting so agree.

11.02

Calling
meetings

¶ 267

The directors of a corporation

- (a) shall call an annual meeting of shareholders not later than 18 months after the corporation comes into existence and subsequently once in each calendar year not later than 15 months after holding the last preceding annual meeting, and
- (b) may at any time call a special meeting of shareholders.

11.03

Notice of
meeting

¶ 159, 268

- (1) Notice of the time and place of a meeting of shareholders of a corporation shall be sent by prepaid mail
 - (a) to each shareholder entitled to vote at the meeting at his latest address as shown on the records of the corporation or its transfer agent,
 - (b) to each director, and
 - (c) to the auditor of the corporationnot less than 10 days nor more than 50 days before the meeting.

Exception

¶ 269

- (2) A notice of meeting is not required to be sent to shareholders who were not registered on the records of the corporation or its transfer agent on the record date determined under subsection (2) or (3) of section 6.04, but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

Adjourn-
ment

¶ 270

- (3) If a meeting of shareholders is adjourned for less than 30 days in any one adjournment it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the meeting which is adjourned.

Notice of
adjourned
meeting

¶ 270

- (4) If a meeting of shareholders is adjourned for 30 days or more, notice of the adjourned meeting shall be given as for an original meeting.

Business

¶ 271

- (5) All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the financial statements

and auditor's report, election of directors and election of the incumbent auditor, is deemed to be special business.

- | | |
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| (6) Notice of a meeting of shareholders at which special business is to be transacted shall state the nature of that business. | Notice of business ¶ 271 |
|--|-----------------------------|

11.04

| | |
|---|---------------------------|
| A shareholder may in any manner waive notice of a meeting of shareholders and attendance of a shareholder at a meeting of shareholders is a waiver of notice of the meeting, except where a shareholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called. | Waiver of notice ¶ 272 |
|---|---------------------------|

11.05

- | | |
|---|--------------------------------------|
| (1) A shareholder entitled to vote at a meeting of shareholders may submit to the corporation notice of any matter that he proposes to raise at the meeting, in this Act called a "proposal". | Shareholder proposal ¶ 273 to 276 |
| (2) A corporation that solicits proxies shall set out the proposal in the management proxy circular required by section 12.04. | Information circular |
| (3) If so requested by the shareholder, the corporation shall include in the management proxy circular a statement of the shareholder of not more than 1,000 words in support of the proposal, and the name and address of the shareholder. | Supporting statement |
| (4) A proposal may include nominations for one or more directors if the nomination is signed by one or more holders of shares representing in the aggregate not less than 5 per cent of the shares or 5 per cent of the shares of a class of shares of the corporation entitled to vote at the meeting to which the proposal is to be presented. | Nomination for director |
| (5) A corporation is not required to comply with subsection (2) if | Exceptions ¶ 277, 278 |
| <ul style="list-style-type: none"> (a) the proposal is submitted to the corporation after a record date has been determined under subsection (2) or (3) of section 6.04, (b) the proposal is not a proper subject for action by shareholders or is a recommendation or request that the directors act in respect of a matter relating to the conduct of the ordinary business operations of the corporation, (c) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a | |

personal claim or redressing a personal grievance against the corporation or its directors, officers, or security holders, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes,

- (d) the corporation, at the shareholder's request, included a proposal in a management proxy circular relating to a meeting of shareholders held within 2 years preceding the receipt of such request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting,
- (e) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within 2 years preceding the receipt of the shareholder's request, or
- (f) the rights conferred by this section are being abused to secure needless publicity for defamatory matters.

Immunity

¶ 279

- (6) No corporation or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this section.

Notice of refusal

¶ 279

- (7) If a corporation refuses to include a proposal in a management proxy circular, the corporation shall, within 10 days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal from the management proxy circular and send to him a statement of the reasons for the refusal.

Shareholder application to court

¶ 279

- (8) Upon the application of a shareholder claiming to be aggrieved by a corporation's refusal under subsection (7), a court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

Corporation's application to court

¶ 279

- (9) The corporation or any person claiming to be aggrieved by a proposal may apply to a court for an order permitting the corporation to omit the proposal from the management proxy circular, and the court, if satisfied that subsection (5) applies, may make such order as it thinks fit.

11.06

Shareholder list

¶ 159

- (1) The directors shall prepare forthwith after the record date determined under subsection (2) or (3) of section 6.04 a list of shareholders entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder.

Powers
of represen-
tative

¶ 284

Joint
shareholders

¶ 284

- (3) An individual authorized under subsection (2) may exercise on behalf of the body corporate or association he represents all the powers it could exercise if it were an individual shareholder.
- (4) Unless the by-laws otherwise provide, if two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the other or others vote the shares, but if more than one of the holders are present or represented by proxy and vote, they shall vote as one on the shares jointly held by them.

11.09

Voting

¶ 285

- (1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall be by show of hands except where a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.

Ballot

¶ 286

- (2) A shareholder or proxyholder may demand a ballot either before or after any vote by show of hands.

11.10

Resolution in
lieu of meet-
ing

¶ 287

- (1) Except where section 9.09 or 13.14 requires a meeting to be held
 - (a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders shall be as valid as if it had been passed at a meeting of the shareholders, and
 - (b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, shall satisfy all the requirements of this Act relating to meetings of shareholders.

Filing reso-
lution

- (2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of shareholders.

11.11

Requisition
of meeting

¶ 288, 289

- (1) The holder or holders of not less than 5 per cent of the issued shares of a corporation that carry the right to vote at the meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

Form

- (2) The requisition, which may consist of several documents of like form each signed by one or more requisitionists, shall state the purposes of the meeting and shall be sent or delivered to the registered office of the corporation.

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| (3) Upon receiving the requisition the directors shall forthwith call a meeting of shareholders for the purposes stated in the requisition. | Directors calling meeting |
| (4) If the directors do not call the meeting within 10 days after receiving the requisition, any requisitionist may call the meeting, which shall be held within 50 days after the corporation received the requisition. | Requisitionist calling meeting ¶ 290 |
| (5) A meeting called under this section shall be called as nearly as possible in the manner meetings are to be called pursuant to the by-laws, this Part and Part 12.00. | Procedure ¶ 291 |
| (6) Unless the shareholders otherwise resolve at a meeting called by requisitionists under subsection (4), the corporation shall | Reimbursement ¶ 292 |
| (a) reimburse the requisitionists the expenses reasonably incurred by them in requisitioning, calling and holding the meeting, and | |
| (b) withhold rateably the amount the requisitionists were reimbursed from moneys due or to become due by way of fees or other remuneration to each director who was in default in not calling the meeting. | |

11.12

- | | |
|---|----------------------------------|
| (1) If for any reason it is impracticable to call a meeting of shareholders of a corporation in the manner in which meetings of those shareholders may be called, or to conduct the meeting in the manner prescribed by the by-laws and this Act, or if for any other reason the court thinks fit, a court, upon the application of a director or a shareholder entitled to vote at the meeting, may order a meeting to be called, held and conducted in such manner as the court thinks fit. | Meeting called by court ¶ 293 |
| (2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with in a meeting called, held and conducted under this section. | Varying quorum ¶ 293 |
| (3) A meeting called, held and conducted in accordance with this section is for all purposes a meeting of shareholders of the corporation duly called, held and conducted. | Valid meeting |

11.13

- | | |
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| (1) A corporation or a shareholder or director may apply to a court to determine any controversy with respect to an election or appointment of a director or auditor of the corporation. | Court review of election ¶ 294 to 297 |
|--|--|

- (2) Upon an application under this section, the court may
 - (a) restrain a director or auditor whose election or appointment is challenged from acting pending determination of the dispute,
 - (b) declare the result of the disputed election or appointment,
 - (c) order a new election or appointment, including in the order directions for the management of the business and affairs of the corporation until a new election is held or appointment made,
 - (d) determine the respective voting rights of shareholders and of persons claiming to own shares, and
 - (e) make any further order it thinks fit.

11.14

- (1) A written agreement between two or more shareholders may provide that in exercising voting rights the shares held by them shall be voted as therein provided.
- (2) An otherwise lawful agreement among all the shareholders of a corporation, or among all the shareholders and a person who is not a shareholder, in this Act called a “unanimous shareholder agreement”, is valid, notwithstanding that the agreement restricts in whole or in part the discretion or powers of the directors to manage the business and affairs of the corporation.

- (3) A unanimous shareholder agreement is void unless its existence is noted conspicuously on every share certificate issued by the corporation.
- (4) A transferee of shares subject to a unanimous shareholder agreement made pursuant to subsection (2) is deemed to be a party to the agreement.
- (5) If a unanimous shareholder agreement restricts the discretion or powers of directors then, to the extent that and so long as such restrictions exist, the directors are relieved from their duties and liabilities and the shareholders are deemed to assume the duties and liabilities imposed upon directors by this Act and by law.

- (6) Notwithstanding any provision in the articles, a unanimous shareholder agreement is deemed to confer on every shareholder who is a party thereto the pre-emptive right referred to in section 5.05 unless that right is expressly limited or excluded in the agreement.

PART 12.00

Proxies

Interpretation
¶ 303 to 306
“form of
proxy”

“proxy”

“registrant”

“solicit”
or
“solicitation”

“solicitation by
or on behalf
of the manage-
ment of a cor-
poration”

No solicitation

Appointing
proxyholder
¶ 307

12.01

(1) In this Part,

- (a) “form of proxy” means a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy;
- (b) “proxy” means a completed and executed form of proxy by means of which a shareholder appoints a proxyholder to attend and act on his behalf at a meeting of shareholders;
- (c) “registrant” means a person registered or required to be registered to trade or deal in securities under the laws of any jurisdiction;
- (d) subject to subsection (2), “solicit” or “solicitation” includes
 - (i) a request for a proxy whether or not accompanied by or included in a form of proxy,
 - (ii) a request to execute or not to execute a form of proxy or to revoke a proxy,
 - (iii) the sending or delivery of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
 - (iv) the sending of a form of proxy to a shareholder under section 12.03;
- (e) “solicitation by or on behalf of the management of a corporation” means a solicitation by any person pursuant to a resolution or instructions of, or with the acquiescence of the directors or a committee of the directors.

(2) “Solicit” or “solicitation” is deemed not to include

- (a) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder,
- (b) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,
- (c) the sending or delivery by a registrant of the documents referred to in section 12.07, or
- (d) a solicitation by a person in respect of shares of which he is the beneficial owner.

12.02

- (1) A shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder, who is

not required to be a shareholder, to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy.

(2) A proxy shall be executed by the shareholder or by his attorney authorized in writing.

Execution
of proxy
¶ 308

(3) A proxy is valid only at the meeting in respect of which it is given or an adjournment thereof.

Validity of proxy
¶ 308

(4) A form of proxy shall

Contents
of form of
proxy
¶ 309

(a) indicate the meeting at which the proxy is to be used,

(b) name and appoint a proxyholder,

(c) if proxies are solicited, set out any matter required by section 12.06, and

(d) provide a blank space for dating the form of proxy and state that if the form of proxy is not dated it is deemed to bear the date of mailing of the form of proxy.

(5) A form of proxy may contain

Further
contents

(a) a revocation of a former proxy,

(b) limitations or instructions as to the manner of voting the shares in respect of which the proxy is given or that may be necessary to comply with the laws of any jurisdiction, or

(c) a limitation as to the number of shares in respect of which the proxy is given.

(6) A shareholder may revoke a proxy

Revocation
of proxy

(a) by depositing an instrument in writing executed by him or by his attorney authorized in writing at the registered office of the corporation at any time up to and including the last business day preceding the day of the meeting, or adjournment thereof, at which the proxy is to be used, or with the chairman of the meeting on the day of the meeting or adjournment thereof, or

(b) in any other manner permitted by law.

(7) The directors shall specify in a notice calling a meeting of shareholders a time not exceeding 48 hours, excluding Saturdays and holidays, preceding the meeting or adjournment thereof before which time proxies to be used at the meeting must be deposited with the corporation or its agent.

Deposit
of proxies

12.03

(1) Subject to subsection (2), the management of a corporation shall, concurrently with or before giving notice of a meeting of shareholders, send by prepaid mail a form of proxy

Mandatory
solicitation
¶ 311 to 313

that complies with section 12.06 to each shareholder who is entitled to receive notice of the meeting at his latest address as shown on the records of the corporation or its transfer agent.

- | | |
|-----------|---|
| Exception | (2) If a corporation has fewer than 15 shareholders, two or more joint holders being counted as one shareholder, the management of the corporation is not required to send a form of proxy under subsection (1). |
| Offence | (3) If the management of a corporation fails to comply with subsection (1), the corporation is guilty of an offence, and a director or officer of the corporation who knowingly authorizes, permits or acquiesces in such failure is also guilty of an offence. |

12.04

- | | |
|--------------------|--|
| Soliciting proxies | (1) A person shall not solicit proxies unless |
| ¶ 313 to 315 | <p>(a) in the case of solicitation by or on behalf of the management of a corporation, a management proxy circular in prescribed form, either as an appendix to or as a separate document accompanying the notice of the meeting, or</p> <p>(b) in the case of any other solicitation, a dissident's proxy circular in prescribed form stating the purposes of the solicitation</p> <p>is sent by prepaid mail to the auditor of the corporation and to each shareholder whose proxy is solicited, at his latest address as shown on the records of the corporation or its transfer agent.</p> |
| Copy to Registrar | (2) A person required to send a management proxy circular or dissident's proxy circular shall send concurrently a copy thereof to the Registrar by prepaid mail. |
| Offence | (3) A person who fails to comply with subsection (1) or (2) is guilty of an offence and, if that person is a body corporate, a director or officer of the body corporate who knowingly authorizes, permits or acquiesces in such failure is also guilty of an offence. |

12.05

- | | |
|-----------------|---|
| Exemption order | (1) Upon the application of an interested person, the Registrar may make an order on such terms as he thinks fit exempting such person from any of the requirements of section 12.03 or subsection (1) of section 12.04, which order may have retrospective effect. |
| ¶ 316 | |

- (2) The Registrar shall set out in the periodical referred to in section 10.03 the particulars of exemptions granted under this section together with the reasons therefor.

Publication

12.06

- (1) In addition to the requirements of subsection (4) of section 12.02, if proxies are solicited the form of proxy shall:

Further contents of form of proxy if a solicitation

- (a) Indicate in bold-face type whether the proxy is solicited by or on behalf of the management of the corporation;
- (b) Indicate in bold-face type that the shareholder has the right to appoint a person other than a person designated in the form of proxy as proxyholder to attend and act on his behalf at the meeting, and shall contain instructions as to the manner in which the shareholder may exercise his right;
- (c) If the form of proxy designates a person as proxyholder, enable the shareholder to designate some other proxyholder;
- (d) Enable the shareholder whose proxy is solicited to specify that the shares registered in his name shall be voted by the proxyholder in favour of or against, in accordance with the shareholder's choice, each matter or group of related matters identified in the notice of meeting or a proposal under section 11.05, other than the election of auditor, his remuneration and the election of directors; but a proxy may confer authority with respect to matters as to which a choice is not so specified if the form of proxy states in bold-face type how the proxyholder intends to vote the shares in respect of each such matter;
- (e) Enable the shareholder whose proxy is solicited to specify that the shares registered in his name shall be voted by the proxyholder or withheld from voting in the election of the directors and auditor; but no proxy shall confer authority to vote for the election of a person as a director or an auditor unless a bona fide proposed nominee for such election is named in the form of proxy and in a management proxy circular, dissident's proxy circular or proposal under section 11.05.

¶ 317 to 320

- (2) A proxy may confer discretionary authority in respect of amendments to matters identified in the notice of meeting

Discretionary authority

or other matters that may properly come before the meeting, if

- (a) the person by or on behalf of whom the solicitation is made is not aware a reasonable time before the time the solicitation is made that such amendments or other matters are to be presented for action at the meeting, and
- (b) a specific statement is made in the form of proxy that the proxy confers discretionary authority.

Voting
instructions

- (3) The form of proxy shall state that the shares represented by the proxy will be voted or withheld from voting on any ballot that may be called for and that, if the shareholder specifies a choice with respect to any matter to be acted upon in accordance with paragraph (d) or (e) of subsection (1), the shares shall be voted accordingly.

Attendance
at meeting

¶ 321

- (4) A person who solicits a proxy and is appointed proxyholder shall attend at the meeting in respect of which the proxy is given and comply with the directions of the shareholder who appointed him.

Offence

- (5) A proxyholder who knowingly fails to comply with the directions of a shareholder under this section is guilty of an offence.

12.07

Duty of
registrant

¶ 322

- (1) In the absence of written instructions to the contrary from the beneficial owner of shares of a corporation that are registered in the name of a registrant or his nominee, the registrant shall forthwith after receipt thereof send or deliver to the beneficial owner

- (a) a copy of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents, other than the form of proxy, sent to shareholders by or on behalf of any person for use in connection with the meeting, and
- (b) a written request for voting instructions from the beneficial owner stating that, if voting instructions are not received at least 24 hours, excluding Saturdays and holidays, before the expiry of the time within which proxies may be deposited with the corporation or its agent as specified in the notice calling the meeting, the registrant may in his discretion vote the shares or appoint a proxyholder to vote the shares at the meeting.

| | |
|--|---------------------------------|
| (2) A registrant shall not vote or appoint a proxyholder to vote shares registered in his name or in the name of his nominee that he does not beneficially own if he does not know who is the beneficial owner of the shares. | Beneficial owner unknown |
| (3) A person by or on behalf of whom a solicitation is made shall, at the request of a registrant, forthwith furnish to the registrant at that person's expense the necessary number of copies of the documents referred to in paragraph (a) of subsection (1). | Copies |
| (4) A registrant shall vote or appoint a proxyholder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner. | Instructions to registrant |
| (5) If requested by a beneficial owner a registrant shall appoint the beneficial owner or a nominee of the beneficial owner as proxyholder. | Beneficial owner as proxyholder |
| (6) The failure of a registrant to comply with this section does not affect the validity of any meeting of shareholders or any action taken thereat. | Validity |
| (7) Nothing in this section gives a registrant the right to vote shares that he is otherwise prohibited from voting. | Limitation |
| (8) A registrant who knowingly fails to comply with this section is guilty of an offence and, if the registrant is a body corporate, a director or officer of the body corporate who knowingly authorizes, permits or acquiesces in such failure is also guilty of an offence. | Offence |

12.08

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|---|----------------------------|
| If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, an interested person may apply to a court for an order restraining the solicitation to which the form of proxy, management proxy circular or dissident's proxy circular relates. | Restraining order ¶ 323 |
|---|----------------------------|

PART 13.00

Financial Disclosure

13.01

- (1) The directors of a corporation shall place before the shareholders at every annual meeting
 - (a) comparative financial statements in prescribed form relating separately to
 - (i) the period that began on the date the corporation came into existence and ended not more than 6 months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than 6 months before the annual meeting, and
 - (ii) the immediately preceding financial year,
 - (b) the report of the auditor, and
 - (c) any further information respecting the financial position of the corporation required by the articles, the by-laws or a unanimous shareholder agreement.

Exception

- (2) Notwithstanding paragraph (a) of subsection (1), the financial statements referred to in subparagraph (ii) of that paragraph may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting.

13.02

Court
exemption

- (1) A corporation may apply to a court for an order authorizing the corporation to omit from its financial statements any item prescribed by regulation, or to dispense with the preparation of any particular financial statement prescribed by regulation, and the court may, if it is satisfied that disclosure of the information therein contained is unnecessary or would be detrimental to the corporation, permit such omission and make any further order it thinks fit.

Notice to
Registrar

- (2) A corporation shall give the Registrar not less than 10 days notice of an application under subsection (1) and the Registrar is entitled to appear in person or by counsel and to be heard.

13.03

Subsidiary
statements

- (1) If a corporation does not prepare the financial statements referred to in section 13.01 in consolidated form the corporation shall keep at its registered office copies of the financial statements of each subsidiary body corporate the accounts of which are not so consolidated.

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|--|---------------------|
| (2) Shareholders and creditors of a corporation and their agents and legal representatives may examine the statements referred to in subsection (1) during the usual business hours of the corporation, and may make extracts therefrom, free of charge. | Examination |
| (3) A corporation may, within 15 days of a request to examine under subsection (2), apply to a court for an order barring the right of any person to so examine and the court may, if it is satisfied that such examination would be detrimental to the corporation or a subsidiary body corporate, bar such right and make any further order it thinks fit. | Barring examination |
| (4) A corporation shall give the Registrar and the person asking to examine under subsection (2) not less than 10 days notice of an application under subsection (3) and the Registrar and such person is entitled to appear in person or by counsel and to be heard. | Notice to Registrar |

13.04

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|--|---|
| (1) Subject to section 13.17, directors of a corporation shall approve the financial statements referred to in section 13.01 and one or more directors shall evidence such approval by signing the financial statements. | Approval of financial statements ¶ 330 |
| (2) A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 13.01 unless the financial statements are | Condition precedent |
| (a) approved and signed in accordance with subsection (1), and | |
| (b) accompanied by the report of the auditor of the corporation. | |

13.05

- | | |
|---|---------------------------------|
| (1) A corporation shall, not less than 10 days before each annual meeting of shareholders, send a copy of the documents referred to in section 13.01 by prepaid mail to | Copies to shareholders ¶ 330 |
| (a) each shareholder, except a shareholder who has informed the corporation in writing that he does not want a copy of those documents, at his latest address as shown on the records of the corporation or its transfer agent, and | |
| (b) upon demand, to any security holder. | |
| (2) A corporation that fails to comply with subsection (1) is guilty of an offence. | Offence |

13.06

(1) A corporation

- (a) any of the issued securities of which are or were part of a distribution to the public,
 - (b) any of the shares of which are listed or posted for trading on any recognized stock exchange, or
 - (c) the gross revenues of which, as shown in the most recent financial statements to be placed before the shareholders under section 13.01, exceed 10 million dollars or the assets of which as shown in those financial statements exceed 5 million dollars;
- shall, not less than 10 days before each annual meeting of shareholders, send a copy of the documents referred to in section 13.01 to the Registrar by prepaid mail.

(2) For the purposes of paragraph (c) of subsection (1), the gross revenues and assets of the corporation shall include the gross revenues and assets of its affiliates.

(3) If a corporation referred to in subsection (1)

- (a) sends to its security holders, or
 - (b) is required to file with or send to a public authority or recognized stock exchange
- interim financial statements or other documents, the corporation shall forthwith send copies thereof to the Registrar by prepaid mail.

(4) A corporation that fails to comply with this section is guilty of an offence.

13.07

(1) A person is disqualified from being an auditor of a corporation if he is not independent of the corporation, its affiliates, and the directors, officers and employees of all such bodies corporate.

(2) For the purposes of this section

- (a) independence is a question of fact, and
- (b) a person is deemed not to be independent if he or a partner or associate of that person
 - (i) is a partner, director, officer or employee of the corporation, of any of its affiliates, or of any director, officer, or employee of any such body corporate,
 - (ii) beneficially owns or controls, directly or indirectly, a material interest in a security of the corporation or any of its affiliates, or

- (iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within two years of his proposed appointment or election as auditor of the corporation.

13.08

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|---|------------------------------|
| (1) Subject to section 13.09, shareholders of a corporation shall by ordinary resolution, at the first meeting of shareholders and at each succeeding annual meeting, elect an auditor to hold office until the close of the next annual meeting. | Election of auditor ¶ 336 |
| (2) An auditor appointed under section 9.03 is eligible for election under subsection (1). | Eligibility |
| (3) Notwithstanding subsection (1), if an auditor is not elected at a meeting of shareholders the incumbent auditor shall continue in office until his successor is elected. | Incumbent auditor |
| (4) The remuneration of an auditor elected under subsection (1) may be fixed by ordinary resolution of the shareholders or, if not so fixed, may be fixed by the directors. | Remuneration |

13.09

- | | |
|---|----------------------------------|
| (1) Notwithstanding subsection (1) of section 13.08, the shareholders of a corporation, other than a corporation described in section 13.06, may resolve not to elect an auditor. | Dispensing with auditor ¶ 335 |
| (2) A resolution under subsection (1) is valid only until the next succeeding annual meeting of shareholders. | Limitation |
| (3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote. | Unanimous consent |

13.10

- | | |
|---|---------------------------------|
| (1) Notwithstanding section 13.08, an auditor of a corporation ceases to hold office when (a) he dies or resigns, or (b) he is removed pursuant to section 13.11. | Ceasing to hold office ¶ 336 |
| (2) A resignation of an auditor becomes effective at the time a written resignation is delivered to the corporation, or at the time specified in the resignation, whichever is later. | Effective date of resignation |
| (3) An auditor who becomes disqualified under section 13.07 shall resign forthwith after becoming aware of his disqualification. | Duty to resign |

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| Court order | <p>(4) Any interested person may apply to a court for an order</p> <p style="padding-left: 20px;">(a) declaring an auditor to be disqualified under section 13.07, and the office of auditor to be vacant, or</p> <p style="padding-left: 20px;">(b) exempting an auditor from disqualification under section 13.07, and the court may, if it is satisfied that an exemption would not unfairly prejudice the shareholders, make an exemption order on such terms as it thinks fit, which order may have retrospective effect.</p> |
|-------------|--|

13.11

- | | |
|--------------------|--|
| Removal of auditor | (1) The shareholders of a corporation may by ordinary resolution at a special meeting remove from office the auditor other than an auditor appointed by a court under section 13.13. |
| ¶ 336 | |
| Vacancy | (2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if not so filled, may be filled under section 13.12. |

13.12

- | | |
|------------------------------|---|
| Filling vacancy | (1) Subject to subsection (3), a quorum of directors shall forthwith fill a vacancy in the office of auditor. |
| ¶ 336 | |
| Calling meeting | (2) If there is not a quorum of directors the director or directors then in office shall forthwith call a special meeting of shareholders to fill a vacancy in the office of auditor and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder. |
| Shareholders filling vacancy | (3) Notwithstanding subsection (1), the articles of a corporation may provide that a vacancy in the office of auditor shall only be filled by vote of the shareholders. |
| Unexpired term | (4) An auditor appointed or elected to fill a vacancy shall hold office for the unexpired term of his predecessor. |

13.13

- | | |
|-------------------------|---|
| Court appointed auditor | (1) If a corporation does not have an auditor, upon the application of a shareholder or the Registrar the court may appoint and fix the remuneration of an auditor who shall hold office until an auditor is elected by the shareholders. |
| ¶ 336 | |
| Exception | (2) Subsection (1) does not apply to a corporation the shareholders of which have resolved under section 13.09 not to elect an auditor. |

13.14

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| Right to attend meeting | (1) The auditor of a corporation is entitled to receive notice of and, at the expense of the corporation, to attend and be heard at every meeting of shareholders. |
| ¶ 336 | |

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| <p>(2) If a director or shareholder of a corporation, whether or not the shareholder is entitled to vote at the meeting, gives written notice not less than 10 days before a meeting of shareholders to the auditor or a former auditor of the corporation, the auditor or former auditor shall attend the meeting at the expense of the corporation and answer questions relating to his duties as auditor.</p> | <p>Duty to attend</p> |
| <p>(3) An auditor or former auditor of a corporation who fails without reasonable excuse to comply with subsection (2) is guilty of an offence.</p> | <p>Offence</p> |
| <p>(4) An auditor who</p> <ul style="list-style-type: none"> (a) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office, (b) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire, (c) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 13.09 is to be proposed, or (d) who resigns <p>is entitled to submit to the corporation a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.</p> | <p>Statement of auditor</p> |
| <p>(5) The corporation shall forthwith send a copy of the statement referred to in subsection (4) to every shareholder entitled to receive notice of any meeting referred to in subsection (1) unless the statement has already been included in a management proxy circular required by section 12.04.</p> | <p>Circulating statement</p> |
| <p>(6) No person shall accept appointment or consent to be nominated for election as auditor of a corporation if he is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire, until he has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he is to be replaced.</p> | <p>Replacing auditor</p> |
| <p>(7) Notwithstanding subsection (6), a person otherwise qualified may accept appointment or consent to be nominated for election as auditor of a corporation if, within 15 days</p> | <p>Exception</p> |

after making the request referred to in that subsection, he does not receive a reply.

Effect of
non-compliance

- (8) Unless subsection (7) applies, an appointment or election as auditor of a corporation of a person who has not complied with subsection (6) is void.

13.15

Examination

¶ 337

- (1) An auditor of a corporation shall make the examination that is in his opinion necessary to enable him to report on the financial statements required by this Act to be placed before the shareholders, except such financial statements or part thereof that relate to a period in respect of which he was not engaged to perform an audit.

Auditor's
report

¶ 337

- (2) Subject to subsection (3), an auditor's report shall state whether, in the auditor's opinion, the financial statements reported upon present fairly the financial position of the corporation and the results of its operations and the source and application of its funds for the period under review in accordance with generally accepted accounting principles and practices consistently applied in that and the preceding period.

Qualified
report

¶ 337

- (3) Notwithstanding subsection (2), but subject to subsection (4), an auditor may qualify the opinion stated in his report, or he may state in his report that he is unable to express an opinion.

Reasons

¶ 337

- (4) If in a report under subsection (1) an auditor
- (a) qualifies his opinion,
 - (b) states that he is unable to express an opinion, or
 - (c) states that the financial statements reported upon do not present fairly the financial position of the corporation or the results of its operations and the source and application of its funds for the period under review in accordance with generally accepted accounting principles and practices consistently applied in that and the preceding period,

the auditor shall explain the reasons why he so qualifies or states and, so far as he is able to estimate or determine, the adjustments or corrections which should in his opinion be made to the financial statements.

Reliance
on other
auditor

¶ 338, 339,
340

- (5) An auditor of a holding corporation may reasonably rely upon the report of the auditor of a body corporate that is a subsidiary of the holding corporation if the extent of his reliance is disclosed in his report as auditor of the holding corporation.

- | | |
|--|----------------|
| (6) For the purpose of subsection (5) reasonableness is a question of fact. | Reasonableness |
| (7) Subsection (5) applies whether or not the financial statements of the holding corporation reported upon by the auditor are in consolidated form. | Application |

13.16

- | | |
|--|----------------------|
| (1) An auditor of a corporation may demand from the directors, officers, employees and agents of the corporation the | Right to information |
| (a) information and explanations, | ¶ 341 |
| (b) access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries, and | |
| (c) information and explanations from the directors, officers, employees and agents of any subsidiary of the corporation, | |
| that are in his opinion necessary to enable him to make the examination and report required under section 13.15. | |
| (2) An auditor may require a person from whom he is entitled under subsection (1) to demand information and explanations to verify such information and explanations by affidavit from that or another person. | Affidavits ¶ 341 |

13.17

- | | |
|---|--------------------------|
| (1) A corporation any of the issued securities of which are or were part of a distribution to the public or any of the shares of which are listed or posted for trading on any recognized stock exchange shall, and any other corporation may, have an audit committee composed of not fewer than 3 directors of the corporation, a majority of whom are not officers or employees of the corporation or any of its affiliates. | Audit committee ¶ 342 |
| (2) An audit committee shall review the financial statements of the corporation before such financial statements are approved under section 13.04. | Duty of committee |
| (3) The auditor of a corporation is entitled to receive notice of and to attend and be heard and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during his term of office. | Auditors attendance |
| (4) The auditor of a corporation or a member of the audit committee is entitled to call a meeting of the committee. | Calling Meeting |
| (5) The directors of a corporation shall forthwith notify the audit committee and the auditor of any error or misstatement of which they become aware in a financial statement upon which the auditor or a former auditor has reported. | Notice of errors |

Error in
financial
statements

(6) If the auditor of a corporation is notified or becomes aware of an error or misstatement in a financial statement upon which he or a former auditor has reported, and if in his opinion the error or misstatement is material, he shall inform the directors accordingly.

Duty of
directors

(7) If so informed by the auditor under subsection (6), the directors of the corporation shall
(a) prepare and issue revised financial statements, or
(b) otherwise inform the shareholders,
and if the corporation is one to which subsection (1) of section 13.06 applies, inform the Registrar in the same manner.

Offence

(8) Directors of a corporation who fail to comply with subsection (7) are guilty of an offence.

Immunity

(9) A director is not guilty of an offence under subsection (7) if he proves that he was not informed under subsection (6).

13.18

Qualified
privilege
(defamation)

Any oral or written statement or report made under this Act by the auditor or former auditor of a corporation has qualified privilege.

¶ 343

PART 14.00

Fundamental Changes

14.01

Subject to sections 14.03 and 14.04, a corporation may by special resolution amend its articles to

- (a) change its name,
- (b) change the place in which its registered office is situated,
- (c) impose or change any restriction upon the business or businesses which the corporation may carry on,
- (d) change any maximum number of shares which the corporation is authorized to issue,
- (e) create new classes of shares,
- (f) change the designation of all or any of its shares, and attach, vary or abrogate any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued,
- (g) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series,
- (h) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof,
- (i) authorize the directors to divide any class of authorized but unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof,
- (j) authorize the directors to vary the rights, privileges, restrictions and conditions attached to authorized but unissued shares of any series,
- (k) revoke, diminish or enlarge any authority conferred under paragraphs (i) and (j),
- (l) limit or exclude the pre-emptive right referred to in section 5.05,
- (m) exclude the right of cumulative voting referred to in section 9.06,
- (n) increase or decrease the number of directors, subject to sections 9.06 and 9.11,
- (o) add, change or delete restrictions on the transfer of shares, or
- (p) add, change or delete any provision that is permitted by this Act to be set out in the articles.

14.02

- (1) The directors or any shareholder may propose amendments to the articles.
- (2) Notice of a meeting of shareholders at which an amendment to the articles is to be proposed shall set out the proposed amendment and, where applicable, shall state that a shareholder is entitled to be paid the fair value of his shares in accordance with section 14.17, but failure to make that statement shall not invalidate an amendment.

Proposal
to amend
¶ 353

Notice of
amendment
¶ 353

14.03

- (1) The holders of shares of a class or, subject to subsection (2), of a series are entitled to vote separately as a class or series upon a proposed amendment to the articles that would
 - (a) increase or decrease any maximum number of authorized shares of such class, or increase any maximum number of authorized shares of a class having rights or preferences prior or superior to the shares of such class,
 - (b) effect an exchange, reclassification or cancellation of all or part of the shares of such class,
 - (c) change the designation, rights, privileges, restrictions or conditions attached to the shares of such class, and, without limiting the generality of the foregoing, that would
 - (i) cancel or vary prejudicially rights to accrued dividends or rights to cumulative dividends,
 - (ii) attach, cancel or vary prejudicially redemption rights,
 - (iii) reduce a dividend or liquidation preference,
 - (iv) cancel or vary prejudicially conversion privileges, options, voting, transfer, or pre-emptive rights, or rights to acquire securities of a corporation, or sinking fund provisions,
 - (d) increase the rights or privileges or any class of shares having rights or privileges equal, prior or superior to the shares of such class,
 - (e) create a new class of shares, or make any class of shares having rights or privileges subordinate or inferior to the shares of such class, equal, prior or superior to the shares of such class, or

Class vote
¶ 354 to 358

- (f) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of such class.

Limitation

- (2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if such series is prejudicially affected by an amendment in a manner different from other shares of the same class.

Right to vote

- (3) Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

Separate resolutions

- (4) A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved of such amendment by a special resolution.

14.04

Delivery of articles

¶ 359

- (1) After an amendment has been adopted under section 14.03 articles of amendment in prescribed form shall be delivered to the Registrar.

Reduction of stated capital

- (2) If an amendment effects or requires a reduction of stated capital, the articles of amendment shall contain or have attached thereto evidence which establishes to the satisfaction of the Registrar that

- (a) there are reasonable grounds for believing that
 - (i) the corporation is and will after the reduction be able to pay its liabilities as they become due, and
 - (ii) the value of the corporation's assets after the reduction will not be less than the aggregate of its liabilities and stated capital of all classes,
- (b) adequate notice has been given to all creditors of the corporation, and
- (c) no creditor objects to the amendment.

Valuation

- (3) For the purposes of subsection (2) account may be taken of an unrealized increment in the value of any marketable asset, and no allowance is required to be made for depletion of a wasting asset.

Constructive reduction of capital

- (4) For the purposes of subsection (2) an amendment to the articles of a corporation that
 - (a) makes redeemable any issued shares that were not previously redeemable,
 - (b) makes convertible into redeemable shares any issued shares that were not previously so convertible, or

(c) increases the redemption price or aggregate redemption prices or advances the time for redemption of any issued redeemable shares,
is deemed to effect a reduction of stated capital.

14.05

Upon delivery to him of articles of amendment the Registrar shall issue a certificate of amendment in accordance with section 20.10.

Certificate
of amendment

14.06

- (1) Upon the issue of a certificate of amendment the amendment becomes effective and the articles are amended accordingly.
- (2) No amendment to the articles of a corporation shall affect an existing cause of action or claim or liability to prosecution in favour of or against the corporation or its directors or officers, or any civil, criminal or administrative action or proceeding to which a corporation or its directors or officers is a party.

Effect of
certificate

Rights
preserved

14.07

- (1) The directors may at any time, and shall when so directed by the Registrar, restate the articles of incorporation as amended.
- (2) Restated articles of incorporation in prescribed form shall be delivered to the Registrar.
- (3) Upon delivery to him of restated articles of incorporation the Registrar shall issue a restated certificate of incorporation in accordance with section 20.10.
- (4) Upon the issue of a restated certificate of incorporation the restated articles of incorporation are effective and supersede the original articles of incorporation and all amendments thereto.

Restated
articles

¶ 360

Delivery
of articles

Restated
certificate

Effect of
certificate

14.08

Two or more corporations, including holding and subsidiary corporations, may amalgamate and continue as one corporation.

Amalgamation

¶ 361

14.09

- (1) Each corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out
 - (a) the provisions that are required to be included in articles of incorporation under section 2.02,

Amalgamation
agreement

¶ 362

- (b) the name and address of each proposed director of the amalgamated corporation,
- (c) the manner in which the shares of each amalgamating corporation are to be converted into shares or other securities of the amalgamated corporation,
- (d) if any shares of an amalgamating corporation are not to be converted into securities of the amalgamated corporation, the amount of money or securities of any other body corporate that the holders of such shares are to receive in addition to or instead of securities of the amalgamated corporation,
- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated corporation or of any other body corporate the securities of which are to be received in the amalgamation, and
- (f) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation.

Cancellation

¶ 362

- (2) If shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement shall provide for the cancellation of such shares when the amalgamation becomes effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated corporation.

14.10

Shareholder
approval

¶ 363

- (1) The directors of each amalgamating corporation shall submit the amalgamation agreement for approval to a meeting of each class and series of shareholders of each amalgamating corporation.

Notice of
meeting

- (2) A notice of meeting complying with section 11.03 shall be sent in accordance with that section to each shareholder of each amalgamating corporation, and shall
 - (a) include or be accompanied by a copy or summary of the amalgamation agreement, and
 - (b) state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 14.17, but failure to make that statement shall not invalidate an amalgamation.

Right to
vote

- (3) Each share of an amalgamating corporation carries the right to vote in respect of an amalgamation whether or not it otherwise carries the right to vote.

- | | |
|---|------------------------------------|
| (4) The holders of shares of a class or series of an amalgamating corporation are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision which, if contained in a proposed amendment to the articles, would entitle such holders to vote as a class or series under section 14.03. | Class vote |
| (5) If no shareholders are entitled to vote as a class or series under subsection (4), an amalgamation agreement is adopted when the shareholders voting thereon have approved of the amalgamation by a special resolution of the shareholders of each amalgamating corporation. | Shareholder approval |
| (6) If any shareholders are entitled to vote as a class or series under subsection (4), an amalgamation agreement is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved of the amalgamation by a special resolution. | Shareholder approval if class vote |
| (7) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement may be terminated by the directors of an amalgamating corporation, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating corporations. | Termination ¶ 363 |

14.11

- | | |
|---|---|
| (1) A holding corporation and one or more of its wholly-owned subsidiary corporations may amalgamate and continue as one corporation without complying with sections 14.09 and 14.10 if | Vertical short-form amalgamation ¶ 364 |
| <ul style="list-style-type: none"> (a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation, and (b) the resolutions provide that <ul style="list-style-type: none"> (i) the shares of each amalgamating subsidiary corporation shall be cancelled without any repayment of capital in respect thereof, (ii) the articles of amalgamation shall be the same as the articles of incorporation of the amalgamating holding corporation, and (iii) no securities shall be issued by the amalgamated corporation in connection with the amalgamation. | |
| (2) Two or more wholly-owned subsidiary corporations of the same holding corporation may amalgamate and continue as one corporation without complying with sections 14.09 and 14.10 if | Horizontal short-form amalgamation |
| <ul style="list-style-type: none"> (a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation, and | |

(b) the resolutions provide that

- (i) the shares of all but one of the amalgamating subsidiary corporations shall be cancelled without any repayment of capital in respect thereof, and
- (ii) the articles of amalgamation shall be the same as the articles of incorporation of the amalgamating subsidiary corporation whose shares are not cancelled.

14.12

Delivery of
articles

(1) After an amalgamation has been adopted under section 14.10 or approved under section 14.11 articles of amalgamation in prescribed form shall be delivered to the Registrar together with the documents required by sections 4.01 and 9.05.

Certificate
of amalga-
mation

(2) Upon delivery to him of articles of amalgamation the Registrar shall issue a certificate of amalgamation in accordance with section 20.10.

14.13

Effect of
certificate

Upon the issue of a certificate of amalgamation

- (a) the amalgamation becomes effective,
- (b) the separate existence of each amalgamating corporation ceases,
- (c) the property of each amalgamating corporation becomes the property of the amalgamated corporation,
- (d) the amalgamated corporation becomes liable for the liabilities of each amalgamating corporation, any existing cause of action and claim or liability to prosecution is unaffected, any civil, criminal or administrative action or proceeding pending by or against an amalgamating corporation may be prosecuted by or against the amalgamated corporation, and any conviction against or ruling or judgment in favour of or against an amalgamating corporation may be enforced by or against the amalgamated corporation, and
- (e) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated corporation and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated corporation.

14.14

Continuance
(import)

¶ 365, 366

(1) A body corporate incorporated other than under this Act may, if so authorized by the laws of the jurisdiction where

it was incorporated, apply to the Registrar for a certificate of continuance.

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| (2) Articles of continuance in prescribed form shall be delivered to the Registrar together with the documents required by sections 4.01 and 9.05. | Articles of continuance |
| (3) Upon delivery to him of articles of continuance the Registrar shall issue a certificate of continuance in accordance with section 20.10. | Certificate of continuance |
| (4) Upon issue of the certificate of continuance <ul style="list-style-type: none"> (a) the body corporate becomes a corporation to which this Act applies as if it had been incorporated under this Act, (b) the articles of continuance are deemed to be the articles of incorporation of the continued corporation, and (c) the certificate of continuance is deemed to be the certificate of incorporation of the continued corporation. | Effect of Certificate |
| (5) The Registrar shall forthwith send a copy of the certificate of continuance to the official or public body that authorized continuance under this Act. | Copy of certificate |
| (6) Continuance under this section shall not affect an existing cause of action or claim or liability to prosecution in favour of or against a body corporate or its directors or officers, or any civil, criminal or administrative action or proceeding to which a body corporate or its directors or officers is a party. | Rights preserved |
| (7) Subject to subsection (8) of section 6.02, a share of a body corporate issued before the body corporate was continued under this Act is deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance irrespective of any designation, rights, privileges, restrictions or conditions set out on the certificate representing the share, but continuance under this section shall not deprive a holder of any right or privilege that he claims under an issued share. | Issued shares |

14.15

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| (1) A corporation may, if authorized by the shareholders in accordance with this section and by the Registrar, apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued as if it had been incorporated under the laws of that other jurisdiction. | Continuance (export) ¶ 365, 367 |
|--|------------------------------------|

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|----------------------|---|
| Notice of meeting | (2) A notice of meeting complying with section 11.03 shall be sent in accordance with that section to each shareholder and shall state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 14.17, but failure to make that statement shall not invalidate a continuance. |
| Right to vote | (3) Each share of the corporation carries the right to vote in respect of the continuance whether or not it otherwise carries the right to vote. |
| Shareholder approval | (4) The continuance becomes authorized when the shareholders voting thereon have approved of the continuance by a special resolution. |
| Discontinuance | (5) This Act ceases to apply to a corporation when the Registrar receives notice satisfactory to him that the corporation has been continued under the laws of another jurisdiction. |
| Rights preserved | (6) Discontinuance under this section shall not affect an existing cause of action or claim or liability to prosecution in favour of or against a body corporate or its directors or officers, or any civil, criminal or administrative action or proceeding to which a body corporate or its directors or officers is a party. |

14.16

| | |
|----------------------------------|--|
| Borrowing powers ¶ 368 | (1) Unless the articles, the by-laws or a unanimous shareholder agreement otherwise provide, directors of a corporation may without authorization of the shareholders <ol style="list-style-type: none"> borrow money upon the credit of the corporation, issue, sell or pledge debt obligations of the corporation, and mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any debt obligation of the corporation. |
| Guarantee ¶ 369, 371 | (2) A corporation shall not guarantee an obligation of another person unless <ol style="list-style-type: none"> the directors have reasonable grounds for believing that the guarantee will further the business of the corporation, or the shareholders approve the guarantee by special resolution. |
| Sale, lease or exchange ¶ 370 | (3) Unless the articles, the by-laws or a unanimous shareholder agreement otherwise provide, directors of a corporation may without the approval of the shareholders sell, lease or |

exchange all or substantially all the property of the corporation, if the sale, lease or exchange is in the ordinary course of the business of the corporation.

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| (4) A sale, lease or exchange of property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in accordance with subsections (5) to (10). | Extraordinary sale, lease or exchange ¶ 370, 372 |
| (5) A notice of meeting complying with section 11.03 shall be sent in accordance with that section to each shareholder and shall | Notice of meeting |
| <ul style="list-style-type: none"> (a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange, and (b) state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 14.17, but failure to make that statement shall not invalidate a sale, lease or exchange referred to in subsection (4). | |
| (6) At such meeting the shareholders may authorize the sale, lease or exchange and may fix or authorize the directors to fix any of the terms and conditions thereof. | Shareholder approval |
| (7) Each share of the corporation carries the right to vote in respect of a sale, lease or exchange referred to in subsection (4) whether or not it otherwise carries the right to vote. | Right to vote |
| (8) The holders of shares of a class or series of shares of the corporation are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (4) if it effects a change which, if contained in a proposed amendment to the articles, would entitle such holders to vote as a class or series under section 14.03. | Class vote |
| (9) If no shareholders are entitled to vote as a class or series under subsection (8), a sale, lease or exchange referred to in subsection (4) is adopted when the shareholders voting thereon have approved of the sale, lease or exchange by a special resolution. | Shareholder approval |
| (10) If any shareholders are entitled to vote as a class or series under subsection (8), a sale, lease or exchange referred to in subsection (4) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved of the sale, lease or exchange by a special resolution. | Shareholder approval if class vote |
| (11) The directors of a corporation may, if authorized by the shareholders approving a proposed sale, lease or exchange, and subject to the rights of third parties, abandon such | Termination |

sale, lease or exchange without further approval of the shareholders.

14.17

Right
to dissent

¶ 373

- (1) Subject to sections 14.18 and 19.04 a holder of shares of any class of a corporation may dissent if the corporation resolves to

- (a) amend its articles under section 14.01 to add, vary or delete provisions restricting the transfer of shares of that class,
- (b) amalgamate with another corporation, except under section 14.11,
- (c) be continued under the laws of another jurisdiction under section 14.15,
- (d) sell, lease or exchange all or substantially all its property under subsection (4) of section 14.16.

Further
right

- (2) A holder of shares of any class or series to which particular rights, privileges, restrictions or conditions are attached may dissent from an amendment to the articles effecting any change referred to in subsection (1) of section 14.03.

Payment for
shares

- (3) In addition to any other right he may have, but subject to subsection (26), a shareholder who complies with this section is entitled, if and when the action approved by the resolution from which he dissents is effective, to be paid by the corporation the fair value of the shares held by him in respect of which he dissents, determined as of the day before the resolution was adopted by the shareholders of the corporation.

No partial
dissent

- (4) A dissenting shareholder may not claim under this section with respect to less than all the shares of a class registered in his name and held on behalf of any one beneficial owner.

Objection

- (5) A dissenting shareholder shall file with the corporation, at or before any meeting of shareholders at which a resolution referred to in subsection (1) or (2) is to be voted on, a written objection to the resolution, unless the corporation did not give notice to the shareholder of the purpose of the meeting or of his right to dissent.

Notice of
resolution

- (6) The corporation shall, within 10 days after the shareholders adopt the resolution, send to each shareholder who has filed the objection referred to in subsection (5) notice that the resolution has been adopted, but such notice is not required to be given to any shareholder who voted for the resolution or who has withdrawn his objection.

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|---|-----------------------|
| <p>(7) A dissenting shareholder shall, within 20 days after he receives a notice under subsection (6) or, if he does not receive such notice, within 20 days after he learns that the resolution has been adopted, send to the corporation a written notice containing</p> <ul style="list-style-type: none"> (a) his name and address, (b) the number and class of shares in respect of which he dissents, and (c) a demand for payment of the fair value of such shares. | Demand for payment |
| <p>(8) A dissenting shareholder shall, within 30 days after filing a notice under subsection (7), send the certificates representing his shares to the corporation or its transfer agent.</p> | Share certificate |
| <p>(9) A dissenting shareholder who fails to comply with subsection (8) shall have no right to make a claim under this section.</p> | Forfeiture |
| <p>(10) A corporation or transfer agent shall endorse on any share certificates received under subsection (8) a notice that the holder is a dissenting shareholder under this section and forthwith return the share certificates to the dissenting shareholder.</p> | Endorsing certificate |
| <p>(11) After filing a notice under subsection (7) a dissenting shareholder shall cease to have any rights as a shareholder except the right to be paid the fair value of his shares as determined under this section, unless the dissenting shareholder withdraws such notice before the corporation makes an offer under subsection (12), in which case he shall be reinstated to his full rights as a shareholder.</p> | Suspension of rights |
| <p>(12) A corporation or, in the event of an amalgamation, its successor, shall, no later than 7 days after the action approved by the resolution is effective, send to each dissenting shareholder who has filed a notice under subsection (7)</p> <ul style="list-style-type: none"> (a) a written offer to pay for his shares at the amount considered by the directors of the corporation to be fair value, or (b) if subsection (26) applies, a notification that it is unable lawfully to pay dissenting shareholders for their shares. | Offer to pay |
| <p>(13) Every offer made under subsection (12) for shares of the same class shall be on the same terms.</p> | Same terms |
| <p>(14) Subject to subsection (26), a corporation shall pay for the shares of a dissenting shareholder within 60 days after an offer made under subsection (12) has been accepted, but</p> | Payment |

| | |
|-------------------------------------|---|
| Corporation application to court | <p>any such offer lapses if the corporation does not receive an acceptance thereof within 30 days after it has been made.</p> <p>(15) If a corporation fails to make an offer under subsection (12), or if a dissenting shareholder fails to accept an offer, the corporation may, within 50 days after the action approved by the resolution is effective, apply to a court to fix the fair value of the shares of any dissenting shareholder.</p> |
| Shareholder application to court | <p>(16) If a corporation fails to apply to a court under subsection (15) a dissenting shareholder may apply to a court for the same purpose within a further period of 20 days.</p> |
| Venue ¶ 442 | <p>(17) An application under subsection (15) or (16) shall be made to a court having jurisdiction in the place where the corporation has its registered office.</p> |
| No security for costs | <p>(18) A dissenting shareholder shall not be required to give security for costs in an application made under subsection (15) or (16).</p> |
| Parties | <p>(19) Upon an application under subsection (15) or (16)</p> <ul style="list-style-type: none"> (a) all dissenting shareholders whose shares have not been purchased by the corporation shall be joined as parties and shall be bound by the decision of the court, and (b) the corporation shall notify each affected dissenting shareholder by prepaid mail of the date, place and consequences of the application and of his right to appear and to be heard in person or by counsel. |
| Powers of court | <p>(20) Upon an application to a court under subsection (15) or (16) the court may determine whether any other person is a dissenting shareholder and should be joined as a party, and the court shall then fix a fair value for the shares of all dissenting shareholders.</p> |
| Appraisers | <p>(21) A court may in its discretion appoint one or more appraisers to assist the court to determine a fair value for the shares.</p> |
| Final order | <p>(22) The final order of a court shall be rendered against the corporation in favour of each dissenting shareholder who is a party to the action and who is entitled to the amount for his shares determined by the court.</p> |
| Interest | <p>(23) A court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective until the date of payment.</p> |
| Notice that subsection (26) applies | <p>(24) If subsection (26) applies the corporation shall, within 10 days after the pronouncement of an order under subsection (22), notify each dissenting shareholder in whose favour</p> |

the order is made that it is unable lawfully to pay dissenting shareholders for their shares.

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| <p>(25) If subsection (26) applies a dissenting shareholder, by written notice delivered to the corporation within 30 days after receiving a notice under subsection (24), may</p> <ul style="list-style-type: none"> (a) withdraw his notice of dissent, to which the corporation is deemed to consent and in which case he shall be reinstated to his full rights as a shareholder, or (b) retain a status as a claimant against the corporation, to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to its shareholders. | <p>Effect where subsection (26) applies</p> |
| <p>(26) A corporation shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that</p> <ul style="list-style-type: none"> (a) the corporation is or would after the payment be unable to pay its liabilities as they become due, or (b) the value of the corporation's assets would thereby be less than the aggregate of its liabilities. | <p>Limitation</p> |
| <p>(27) For the purposes of subsection (26) account may be taken of an unrealized increment in the value of any marketable asset and no allowance is required to be made for depletion of a wasting asset.</p> | <p>Valuation</p> |

14.18

- | | |
|--|---|
| <p>(1) In this section “reorganization” means a court order made under</p> <ul style="list-style-type: none"> (a) the Bankruptcy Act approving a proposal, (b) section 19.04, and (c) any other Act of the Parliament of Canada. <p>(2) If a corporation is subject to an order referred to in subsection (1) its articles of incorporation may be amended by such order to effect any change that might lawfully be made by an amendment under section 14.01.</p> <p>(3) If a court makes an order referred to in subsection (1) the court may also</p> <ul style="list-style-type: none"> (a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms thereof, and, (b) constitute or reconstitute the board of directors of the corporation and appoint directors in place of or in addition to all or any of the directors then in office. | <p>Interpretation “reorganization”</p> <p>¶ 374, 375</p> <p>Powers of court</p> <p>Further powers</p> |
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|-------------------------------|---|
| Articles of reorganization | (4) After an order referred to in subsection (1) has been made, articles of reorganization in prescribed form shall be delivered to the Registrar together with the documents required by sections 4.01 and 9.12 if applicable. |
| Certificate of reorganization | (5) Upon delivery to him of articles of reorganization the Registrar shall issue a certificate of amendment in accordance with section 20.10. |
| Effect of certificate | (6) Upon issue of the certificate of amendment the reorganization becomes effective and the articles of incorporation are amended accordingly. |
| No dissent | (7) A shareholder is not entitled to dissent under section 14.17 if an amendment to the articles of incorporation is effected under this section. |

PART 15.00

Prospectus Qualification

Interpretation
¶ 376 to 380,
421 to 425
“corporation”

15.01

In this Part,

“distribution
to the public”

(a) “corporation” means a body corporate incorporated under the laws of the Parliament of Canada or continued under this Act and not discontinued under this Act;

(b) “distribution to the public”, used in relation to trading in securities, means,

(i) trades that are made for the purpose of distributing to the public securities issued by a corporation and not previously distributed to the public, or

(ii) trades in previously issued securities for the purpose of distributing such securities to the public where the securities form all or a part of or are derived from the holdings of a person or of persons acting jointly or in concert who hold a sufficient number of securities of a corporation materially to affect the control of the corporation,

whether such trades are made directly or indirectly, through an underwriter or otherwise, and includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to such distribution;

“finance
corporation”

(c) “finance corporation” means a corporation so defined in the regulations;

“promoter”

(d) “promoter” means

(i) a person or a combination of persons who directly or indirectly takes the initiative in founding, organizing or substantially reorganizing the business of a corporation, or

(ii) a person who, in connection with the founding, organizing or substantial reorganizing of the business of a corporation, directly or indirectly receives in consideration of services or property, or both services and property, 10 per cent or more of any class of securities of the corporation or 10 per cent or more of the proceeds from the sale of any class of securities of a particular issue; but a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property is deemed not to be a promoter if such person does not other-

wise take part in founding, organizing or substantially reorganizing the business;

(e) “security” includes

“security”

- (i) a document, instrument or writing commonly known as a security,
 - (ii) a document evidencing title to or interest in capital, property, revenues or profits,
 - (iii) a document evidencing an option, right or other interest in or to a security,
 - (iv) a bond, debenture, share, note, unit, unit certificate, participation certificate, certificate of share or interest, or pre-incorporation certificate,
 - (v) an agreement providing that money received will be repaid or treated as a prepayment for a bond, debenture, share, note, unit or interest,
 - (vi) a profit-sharing agreement or certificate,
 - (vii) a certificate of interest in an oil, natural gas or mining lease, claim or voting trust certificate,
 - (viii) a document evidencing an oil or natural gas royalty or lease or fractional or other similar interest therein,
 - (ix) a collateral trust certificate,
 - (x) an income or annuity contract, other than a contract issued by an insurance corporation,
 - (xi) an investment contract, and
 - (xii) a document evidencing an interest in a scholarship or educational plan or trust
- of a corporation;

(f) “trade” or “trading” includes

“trade” or
“trading”

- (i) a completed or attempted sale, disposition of or other dealing in or any solicitation in respect of a security for consideration, whether the terms of payment are on margin, instalment or otherwise,
- (ii) a transaction in a security through a recognized stock exchange,
- (iii) a receipt by a person of an order to buy or sell a security, and
- (iv) an act, advertisement or negotiation directly or indirectly to further a transaction described in this paragraph;

(g) “underwriter” means a person who, as principal, purchases securities from a person with a view to, or who as agent for a person offers for sale or sells securities

“underwriter”

in connection with, a distribution to the public of such securities, and includes a person who has a direct or indirect participation in any such distribution, but does not include a person whose interest in the transaction is limited to receiving the usual and customary distributors' or sellers' commission payable by an underwriter.

15.02

Prohibited trading

¶ 381, 382
401

Receipt

- (1) A person shall not trade a security of a corporation on his own account or on behalf of any other person if such trade would be in the course of a distribution to the public of such security until there have been sent to the Registrar both a preliminary prospectus and a prospectus in prescribed form in respect of the offering of such security and receipts therefor have been obtained from the Registrar.
- (2) Upon delivery to him of a preliminary prospectus the Registrar shall forthwith issue a receipt therefor.

Interpretation

"waiting period"

¶ 384, 386

Exception

15.03

- (1) In this section, "waiting period" means the interval, which shall be not less than 10 days, between the issue by the Registrar of a receipt for a preliminary prospectus relating to the offering of a security and the issue by him of a receipt for the prospectus.
- (2) Notwithstanding section 15.02 but subject to section 15.29, a person may during the waiting period,
 - (a) distribute a notice, circular, advertisement or letter to or otherwise communicate with a person, identifying the security proposed to be issued, stating the price thereof, if then fixed, the name and address of a person from whom the security may be purchased and containing such further information as may be permitted or required by the regulations, if every such notice, circular, advertisement, letter or other communication states the name and address of a person from whom a preliminary prospectus may be obtained;
 - (b) distribute a preliminary prospectus;
 - (c) solicit expressions of interest from a prospective purchaser if, prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is sent or delivered to him.

15.04

The underwriter or other person distributing a security in the course of a distribution to the public shall maintain a record available for inspection by the Registrar of the names and addresses of each person to whom a preliminary prospectus has been sent or delivered.

Record

¶ 385

15.05

- (1) A preliminary prospectus shall contain the certificates required by sections 15.14 and 15.15 and shall, subject to subsection (2), comply substantially with this Act and the regulations respecting a prospectus, except that the report or reports of the auditor under section 15.10 are not required to be included.
- (2) A preliminary prospectus may omit information with respect to the price to the underwriter and the offering price to the public and other matters dependent upon or relating to such prices.

Preliminary
prospectus

¶ 387

Omission
permitted

15.06

There shall be printed in red ink on the outside front cover of a preliminary prospectus the following statement or such variation thereof as the Registrar may permit:

Statement
on cover

¶ 388

“This is a preliminary prospectus, a copy of which has been filed with the Registrar but which has not yet become final for the purpose of a distribution to the public of the securities to which it relates. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted until a receipt for the final prospectus is obtained from the Registrar”.

15.07

- (1) If it appears to the Registrar that a preliminary prospectus does not comply substantially with this Act and the regulations respecting a prospectus, he may, without giving notice, order the activities permitted by subsection (2) of section 15.03 in the security to which the preliminary prospectus relates to cease until a revised preliminary prospectus, satisfactory to the Registrar, is sent to him and to each recipient of the defective preliminary prospectus named in the record required by section 15.04.
- (2) If a material adverse change occurs after the date of the preliminary prospectus and before the issue of a receipt for a prospectus that makes untrue or misleading any statement of a material fact contained in the preliminary prospectus, an amendment to the preliminary prospectus shall

Defective
preliminary
prospectus

¶ 389

Adverse
change

be sent to the Registrar as soon as practicable, and in any event within 10 days after the date the change occurred.

Delivery
of amendment

- (3) Immediately after an amendment to a preliminary prospectus has been sent to the Registrar a copy of the amendment shall be sent or delivered to each person named in the record required by section 15.04.

15.08

Disclosure
¶ 390

- (1) A prospectus shall provide full, true and plain disclosure of all material facts relating to the security proposed to be issued and shall comply with this Act and the regulations.

Additional
disclosure

- (2) There shall be attached to or included in a prospectus the statements, reports and other documents required by the regulations.

15.09

Additional
information
¶ 391, 392

If a statement required to be contained in a prospectus would otherwise be misleading, the prospectus shall contain the additional information, whether or not expressly required to be contained in the prospectus, necessary to make the required statement not misleading in the light of the circumstances in which it was made.

Interpretation
¶ 393, 394
“auditor”

15.10

- (1) In this section “auditor” means
 - (a) the auditor of the corporation the securities of which are offered by the prospectus or of any of its affiliates, and
 - (b) any other accountant apparently qualified to be the auditor of a corporation, who is acceptable to the Registrar.

Financial
statements

- (2) A prospectus shall contain the financial statements prescribed by the regulations.

Auditor's
report in
prospectus

- (3) A prospectus shall contain a report of an auditor on the financial statements contained therein, including financial statements of a business acquired or to be acquired by a corporation.

Auditor's
report

- (4) A report referred to in subsection (3) shall, subject to subsection (6), state whether in the auditor's opinion the financial statements reported upon present fairly the financial position of the corporation or a business acquired or to be acquired by the corporation and the results of their respective operations and sources and application of funds for the periods under review in accordance with generally

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| accepted accounting principles and practices consistently applied in that and the preceding periods. | |
| (5) The auditor shall make the examination that is in his opinion necessary to enable him to make a report under subsection (3). | Examination |
| (6) Notwithstanding subsection (3), but subject to subsection (7), an auditor may qualify the opinion stated in his report, or he may state in his report that he is unable to express an opinion. | Qualified report |
| (7) If in a report under subsection (3) an auditor | Reasons |
| (a) qualifies his opinion, | |
| (b) states that he is unable to express an opinion, or | |
| (c) states that the financial statements reported upon do not present fairly the financial position of the corporation or business or the results of their respective operations and sources and application of funds for the periods under review in accordance with generally accepted accounting principles and practices consistently applied in that and the preceding periods, | |
| the auditor shall explain the reasons why he so qualifies or states and, so far as he is able to estimate or determine, the adjustments or corrections which he thinks should be made to the financial statements. | |
| (8) If in a report under subsection (3) an auditor qualifies his opinion, the financial statements reported upon shall be revised where reasonably practicable, and the auditor shall then prepare a revised report. | Revised financial statements |
| (9) An auditor of a holding corporation may reasonably rely upon the report of the auditor of a body corporate that is a subsidiary of the holding corporation if the extent of his reliance is disclosed in his report as auditor of the holding corporation. | Reliance on other auditor |
| (10) For the purposes of subsection (9) reasonableness is a question of fact. | Reasonableness |
| (11) Subsection (9) applies whether or not the financial statements of the holding corporation reported upon by the auditor are in consolidated form. | Application |
| (12) An auditor may demand from the directors, officers, employees and agents of a corporation the | Right to information |
| (a) information and explanations, | |
| (b) access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries, and | |

| | |
|----------------------------------|--|
| | <p>(c) information and explanations from the directors, officers, employees and agents of any subsidiary of the corporation,</p> <p>that are in his opinion necessary to enable him to make an examination and report required under this section.</p> |
| Affidavits | (13) An auditor may require a person from whom he is entitled under subsection (12) to demand information and explanations to verify such information and explanations by affidavit from that or another person. |
| Qualified privilege (defamation) | (14) Any oral or written statement or report made by an auditor under this Part has qualified privilege. |
| 15.11 | |
| Approval of financial statements | A financial statement of a body corporate contained in a prospectus shall be approved by the directors, and one or more directors shall evidence such approval by signing the financial statements. |
| ¶ 395 | |
| 15.12 | |
| Expert's consent | (1) If a solicitor, auditor, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him prepared or certified part of a prospectus or a report or valuation used in or in connection with a prospectus, the written consent of such person to the use thereof in or in connection with the prospectus shall be sent to the Registrar not later than the time the prospectus is sent to him. |
| ¶ 396 | |
| Exception | (2) The Registrar may dispense with a consent under subsection (1) if, in his opinion, the obtaining of the consent is impracticable or would involve undue hardship. |
| Auditor's consent | (3) The consent of an auditor referred to in subsection (1) shall refer to his report required by section 15.10, stating <p>(a) the date of the report,</p> <p>(b) that he has read the prospectus, and</p> <p>(c) that the information contained in the prospectus which is derived from the financial statements reported upon by him or which is within his knowledge is in his opinion presented fairly and is not misleading.</p> |
| Expert's interest | (4) If a person referred to in subsection (1) beneficially owns or expects to receive any interest, direct or indirect, in the securities or property of the corporation or any of its affiliates, such interest shall be disclosed in the prospectus. |
| Future employment | (5) If a person referred to in subsection (1) is or is expected to be elected, appointed or employed as a director, officer or |

employee of the corporation or of any of its affiliates, such fact shall be disclosed in the prospectus.

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| (6) Notwithstanding subsections (4) and (5), the Registrar may refuse to issue a receipt for a prospectus if a person referred to in subsection (1) is not acceptable to him. | Refusal of receipt |
|---|--------------------|

15.13

| | |
|--|---------------------------|
| If a change is proposed to be made in a preliminary prospectus or prospectus that in the opinion of the Registrar materially affects any consent required by section 15.12, the Registrar may require that a further consent be sent to him before he issues a receipt for the amended prospectus. | Further consents ¶ 397 |
|--|---------------------------|

15.14

- | | |
|--|----------------------|
| (1) Subject to subsection (2), a prospectus shall contain a certificate in the following form, signed by the chief executive officer, the chief financial officer and, on behalf of the directors, by one or more directors of the corporation other than the aforementioned officers, and by any promoter of the corporation: | Certificate ¶ 398 |
|--|----------------------|

“This prospectus constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by Part 15.00 of The Canada Business Corporations Act and the regulations made under that Act.”

- | | |
|---|-------------------------------|
| (2) If the Registrar is satisfied that either or both the chief executive officer or chief financial officer of the corporation is unable to sign a certificate in a prospectus, the Registrar may permit any other responsible officer of the corporation to sign. | Alternative signature |
| (3) The Registrar may relieve a promoter from the obligation to sign a certificate in a prospectus. | Promoter's certificate |
| (4) The Registrar may require any person who was a promoter of the corporation within two years preceding the date of filing a prospectus to sign the certificate required by subsection (1), subject to such conditions as the Registrar may allow. | Former promoter's certificate |
| (5) The Registrar may allow a promoter to sign a certificate in a prospectus by his agent duly authorized in writing. | Agent |

15.15

- | | |
|---|------------------------------------|
| (1) A prospectus shall contain a certificate in the following form, signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the corporation whose securities are being offered by the prospectus: | Underwriter's certificate ¶ 399 |
|---|------------------------------------|

“To the best of our knowledge, information and belief, this prospectus constitutes full, true and plain disclosure of all material

facts relating to the securities offered by this prospectus as required by Part 15.00 of The Canada Business Corporations Act and the regulations made under that Act.”

Agent

- (2) The Registrar may allow an underwriter to sign a certificate in a prospectus by his agent duly authorized in writing.

15.16

Notice
of intention
to distribute

¶ 400, 401

- (1) A person shall not engage in a distribution to the public of a security until he has notified the Registrar in writing of his intention to engage in such distribution.
- (2) A person shall notify the Registrar in writing when, in that person’s opinion, he has ceased to engage in the distribution to the public of a security.

Ceasing
to distribute

15.17

Amendment
of prospectus

¶ 402

If a material change occurs during the period of distribution to the public of a security that makes untrue or misleading any statement of a material fact contained in a prospectus in respect of which a receipt has been issued by the Registrar, an amendment to the prospectus shall be sent to the Registrar as soon as practicable and, in any event, within 10 days after the date the change occurred.

15.18

New prospectus
after 12 months

¶ 403

If distribution to the public of a security is in progress 12 months after

- (a) the date of issue of the receipt for the preliminary prospectus relating to the security, or
- (b) the date of the last prospectus relating to the security sent to the Registrar under this section,

a new prospectus complying with this Part shall be sent to the Registrar and a receipt therefor obtained from him within 20 days after the expiration of the applicable 12-month period or, subject to such terms as the Registrar may impose, within such greater number of days as he may permit.

15.19

Supplementary
literature

¶ 404

After the date of issue by the Registrar of a receipt for a prospectus relating to a security, a person trading in the security in the course of distribution to the public, either on his own account or on behalf of any other person, may distribute the prospectus, a document attached to, included with or referred to in the prospectus and a notice, circular, advertisement or letter described in paragraph (a) of subsection (2) of section 15.03 but shall not distribute any other written material respecting the security that is prohibited by the regulations.

15.20

- (1) Section 15.02 does not apply to a trade where the purchaser or proposed purchaser is
- (a) a body corporate to which the Bank Act, the Industrial Development Bank Act, the Trust Companies Act, the Loan Companies Act or the Canadian and British Insurance Companies Act applies,
 - (b) Her Majesty in right of Canada or of a province or territory of Canada or a municipal corporation or public board or commission in Canada,
 - (c) a person, other than an individual, recognized by the Registrar as an exempt purchaser, or
 - (d) a person, other than an individual, who purchases a security having an aggregate acquisition cost to the purchaser of not less than \$97,000,
- if such purchaser is purchasing for his own account for investment only and not with a view to resale or distribution.
- (2) Subject to the regulations, section 15.02 does not apply to a trade
- (a) between a corporation and an underwriter acting as a purchaser, and trades between or among underwriters,
 - (b) in a security of its own issue that is distributed by a corporation as a share dividend to holders of its securities,
 - (c) in a security that is distributed by a corporation to holders of its securities in a reorganization or liquidation and dissolution, if no remuneration is paid in respect of such trade except for professional and administrative services,
 - (d) that is a conversion of a security issued by a corporation pursuant to a conversion privilege attached to that security,
 - (e) in a security pursuant to the exercise of an option or right granted by the corporation to holders of its securities to purchase additional securities of its own issue if the corporation has given the Registrar written notice stating the date, amount, nature and conditions of the proposed sale, including the approximate net proceeds to be derived by the corporation if the additional securities are taken up and paid for, and either
 - (i) the Registrar has not informed the corporation within 10 days after the giving of such notice that objects to the sale, or

Exempt
purchasers
¶ 405, 406,
407

Exempt
trades

- (ii) information satisfactory to the Registrar relating to the securities has been delivered to and accepted by the Registrar, and if no remuneration is paid in respect of such trade except for professional and administrative services,
- (f) in a security of a corporation that is exchanged by or for the account of the corporation with another body corporate or the holders of the securities of the other body corporate in connection with an amalgamation, a reorganization, or a take-over bid, or
- (g) by a corporation of securities of its own issue with its employees or the employees of any of its affiliates who are not induced to trade by expectation of employment or continued employment, or with a trustee for them.

Exempt
securities

(3) Section 15.02 does not apply to the following securities:

- (a) Bonds, debentures or other evidences of indebtedness of or guaranteed by
 - (i) the government of Canada or a province or territory of Canada, or by the government of a foreign country or a political division thereof,
 - (ii) a municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a province and collectable by or through a municipality, or
 - (iii) the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by the Bretton Woods Agreements Act (Canada), if the bonds, debentures or evidences of indebtedness are payable in the currency of Canada or the United States of America;
- (b) Certificates or receipts of a trust company to which the Trust Companies Act applies issued for moneys received for guaranteed investment;
- (c) Negotiable promissory notes or commercial paper maturing not more than one year from the date of issue, if each note or commercial paper traded to an individual has a denomination or principal amount of not less than \$50,000;

- (d) Mortgages, hypothecs or other encumbrances upon property, if such mortgages, hypothecs or other encumbrances are not offered for sale to the public;
 - (e) Securities evidencing indebtedness due under a conditional sales contract or other title retention contract providing for the acquisition of property if such securities are not offered for sale to the public;
 - (f) Securities issued by a body corporate incorporated under an Act of the Parliament of Canada and organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, if no part of the net earnings of such body corporate ensure to the benefit of any security holder and if information satisfactory to the Registrar relative to the securities has first been sent to the Registrar;
 - (g) Subject to the regulations, securities issued and sold for the purpose of financing a prospecting expedition;
 - (h) Securities listed or posted for trading on a recognized stock exchange where the securities are distributed to the public through the facilities of the stock exchange pursuant to the rules of the stock exchange and the requirements of the Registrar, if a statement of material facts that complies with the regulations is filed with and accepted by the stock exchange and the Registrar;
 - (i) Securities listed or posted for trading on a recognized stock exchange if the securities are distributed to the public through the facilities of the stock exchange by way of isolated trades not made in the course of continued and successive transactions of a like nature;
 - (j) Securities exempted by the regulations.
- (4) Sections 15.26, 15.27 and 15.28 apply mutatis mutandis to a distribution under paragraph (h) of subsection (3) as if section 15.02 or 15.18 applied thereto, and the statement of material facts referred to in paragraph (h) of subsection (3) is deemed to be a prospectus for the purposes of sections 15.26, 15.27 and 15.28.

Application

15.21

- (1) If doubt exists whether a proposed trade in a security would be in the course of a distribution to the public of the security, the Registrar may, upon the application of an interested person, rule whether the proposed trade would be in the course of distribution to the public of the security.

Determination whether distribution to public

¶ 401, 408

Registrar's
power
to exempt

ty, and such ruling is final and there is no appeal therefrom.

- (2) If upon an application under subsection (1), the Registrar is satisfied that,

- (a) the number of securities is not substantial relative to the holdings of the offeror or proposed offeror, or
- (b) the proposed purchaser is acquiring the security or securities for investment purposes and has reasonable knowledge of the affairs of the issuer,

and, in the opinion of the Registrar, to do so would not be prejudicial to the public interest, the Registrar may rule that, subject to such terms as the Registrar may impose, the trade or proposed trade is not a distribution to the public and such ruling is final and there is no appeal therefrom.

Dispensing
with
prospectus

- (3) If the Registrar determines under subsection (1) or (2) that a proposed trade would not be in the course of a distribution to the public of the security, the Registrar may rule that a prospectus is not required in respect of such trade.

Determining
whether
distribution
concluded

- (4) If doubt exists whether a distribution to the public of any security has been concluded or is currently in progress, the Registrar may decide the question and rule accordingly, and such ruling is final and there is no appeal therefrom.

15.22

Obtaining
information
from
issuer

¶ 409

- (1) If a person proposing to make a distribution to the public of previously distributed securities of a corporation is unable to obtain from the corporation information that is necessary to comply with this Act, the Registrar may order the corporation to furnish to the person who proposes to make the distribution such information as the Registrar thinks necessary for the purposes of the distribution, upon such terms as he thinks fit, and the information may be used by the person to whom it is furnished for the purpose of complying with this Act.

Registrar's
power
to exempt

- (2) If a person proposing to make a distribution to the public of previously distributed securities of a corporation is unable to obtain a signature required by section 15.14 or 15.15, or is otherwise unable to comply with this Act, the Registrar may, if he is satisfied that reasonable efforts have been made to comply with this Act and that no one is likely to be prejudicially affected by failure to comply, exempt such person from any provision of this Act upon such terms as he thinks fit.

15.23

(1) The Registrar may by order in writing refuse to issue a receipt for a prospectus sent to him under this Part, if it appears to the Registrar that:

Registrar's
power to
refuse re-
ceipt for
prospectus

(a) The prospectus or any document required to be attached to or included in the prospectus

¶ 410, 411

(i) fails to comply substantially with this Part or the regulations,

(ii) contains a statement, promise, estimate or forecast that is misleading, false or deceptive, or

(iii) conceals or omits to state a material fact necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made;

(b) An unconscionable consideration has been paid or given or is proposed to be paid or given for promotional purposes or for services or the acquisition of property;

(c) The proceeds from the sale of the securities to which the prospectus relates that are to be paid to the corporation, together with other resources of the corporation, are insufficient to accomplish the purpose of the issue stated in the prospectus;

(d) An escrow or pooling agreement that the Registrar thinks necessary has not been entered into with respect to securities issued for a consideration other than cash;

(e) An agreement that the Registrar thinks necessary to accomplish the objects indicated in the prospectus has not been entered into with respect to holding in trust the proceeds payable to the corporation from the sale of the securities pending the distribution of the securities;

(f) In the case of a prospectus of a finance corporation,

(i) the plan of distribution of the securities offered is not acceptable to the Registrar,

(ii) the securities offered are not secured in the manner, on the terms and by the means required by the regulations, or

(iii) the finance corporation does not meet the requirements prescribed in the regulations.

(2) The Registrar shall not make an order under subsection (1) until he has given the person who sent the prospectus an opportunity to be heard.

Previous
hearing

15.24

Stop trading
order

¶ 412

(1) If it appears to the Registrar, after the sending to him of a prospectus under this Part and the issue of a receipt therefor, that any of the circumstances set out in section 15.23 exist, the Registrar may order trading in the distribution to the public of the securities to which the prospectus relates to cease.

Previous
hearing

(2) No order shall be made under subsection (1) or section 15.25 without a previous hearing unless in the opinion of the Registrar the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made, but such temporary order shall expire 15 days from the date of the making thereof.

Service of
order

(3) A copy of an order or temporary order made under this section or section 15.25 shall be served upon the corporation to whose securities the prospectus relates and upon every underwriter and other person who is engaged in the distribution to the public of the securities, and immediately upon receipt of the copy of the order or temporary order,

(a) no further trades shall be made in the course of distribution to the public of the securities named in the order or temporary order by any person, and

(b) a receipt issued by the Registrar for the prospectus is deemed revoked.

15.25

Finance
corporation

¶ 413

(1) While distribution to the public of the securities to which the prospectus of a finance corporation relates is in progress, the Registrar may from time to time require the finance corporation to furnish to him financial statements in such form and for such period or periods as he may specify and such other information that will enable the Registrar to satisfy himself that

(a) the securities are being distributed in a manner acceptable to him,

(b) the securities are secured in the manner, on the terms and by the means required by the regulations, and

(c) the finance corporation meets the requirements prescribed in the regulations.

Stop
trading
order

(2) If the Registrar is not satisfied with a statement or matter referred to in subsection (1), the Registrar may, subject to subsections (2) and (3) of section 15.24, order trading in the distribution to the public of the securities to which the prospectus of the finance corporation relates to cease.

15.26

- (1) A person, other than an agent of the purchaser, who receives an order for a security offered in the course of distribution to the public to which section 15.02 or 15.18 is applicable shall, unless he has previously done so, send by prepaid mail or deliver to the purchaser the prospectus or amended prospectus, whichever is the last required to be sent to the Registrar, either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after entering into such agreement.
- (2) An agreement of purchase and sale referred to in subsection (1) is not binding upon the purchaser if the person from whom the purchaser purchased the security receives written or telegraphic notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the prospectus or amended prospectus, whichever is the last required to be sent to the Registrar.
- (3) Subsection (2) does not apply if the purchaser is an underwriter, securities dealer, broker or salesman or if the purchaser sells or otherwise transfers beneficial ownership of the security referred to in subsection (2), otherwise than to secure indebtedness, before the expiration of the time referred to in subsection (2).
- (4) For the purposes of this section, where a prospectus or amended prospectus is sent by prepaid mail, the prospectus or amended prospectus is deemed to be received in the ordinary course of mail by the person to whom it was addressed.
- (5) For the purposes of this section, the receipt of a prospectus or amended prospectus by a person who is or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security referred to in subsection (1) is deemed to be receipt by the purchaser on the date the agent received the prospectus or amended prospectus.
- (6) For the purposes of this section, the receipt of the notice referred to in subsection (2) by a person who acted as agent of the seller with respect to the sale of a security referred to in subsection (1) is deemed to be receipt by the seller on the date the agent received the notice.
- Duty to deliver prospectus
¶ 414
- Withdrawal from purchase
- Exception
- Constructive delivery
- Receipt by purchaser's agent
- Notice to seller's agent

| | |
|-----------------------------------|---|
| Purchaser's agent | (7) For the purposes of this section, a person is deemed not an agent of the purchaser unless the person is acting solely as the agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation, directly or indirectly, from the seller with respect to the purchase and sale. |
| Burden of proof | (8) The burden of proving that the time for giving notice under subsection (2) has expired is upon the person from whom the purchaser agreed to purchase the security. |
| Statement of rights in prospectus | (9) A prospectus shall contain a statement of the rights given to a purchaser by this section. |

15.27

| | |
|----------------------|---|
| Rescission ¶ 415 | (1) Subject to subsections (2) and (3), a person who is a party to a contract as purchaser resulting from the offer of a security in the course of distribution to the public to which section 15.02 or 15.18 is applicable has a right to rescind the contract while still the owner of the security, if the prospectus and any amended prospectus then sent to the Registrar in compliance with section 15.17 received by the purchaser, as of the date of receipt, contains an untrue statement of a material fact or omits to state a material fact necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made. |
| Limitation of action | (2) No action may be commenced under this section after the expiration of 90 days from the receipt of the prospectus or amended prospectus by the purchaser or the date of the contract referred to in subsection (1), whichever is later. |
| Exception | (3) Subsection (1) does not apply if <ol style="list-style-type: none"> the untrue statement or omission was unknown to the person whose securities are being offered by the prospectus and to the underwriter referred to in subsection (1) of section 15.15 and, in the exercise of reasonable diligence, could not have been known to such person or underwriter, the untrue statement is corrected or the omission is disclosed in an amended prospectus sent to the Registrar in accordance with section 15.17 and the amended prospectus was sent or delivered to the purchaser in accordance with section 15.26, or the purchaser knew of the untruth of the statement or knew of the omission at the time he purchased the security. |

- | | |
|--|-----------------------------------|
| (4) For the purposes of this section, if a prospectus or amended prospectus is sent by prepaid mail, it is deemed to be received in the ordinary course of mail by the person to whom it was addressed. | Constructive delivery |
| (5) For the purposes of this section, the receipt of a prospectus or amended prospectus by a person who is or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security referred to in subsection (1) is deemed to be receipt by the purchaser on the date the agent received the prospectus or amended prospectus. | Receipt by purchaser's agent |
| (6) For the purposes of this section, a person is deemed not an agent of the purchaser unless the person is acting solely as the agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation, directly or indirectly, from the seller with respect to the purchase and sale. | Purchaser's agent |
| (7) The right conferred by this section is in addition to any other right the purchaser may have. | Additional cause of action |
| (8) A prospectus shall contain a statement of the right of rescission given to a purchaser by this section. | Statement of rights in prospectus |

15.28

If a receipt for a prospectus has been issued by the Registrar, notwithstanding that the receipt is thereafter revoked, a purchaser of securities to which the prospectus relates is deemed to have relied upon the statements made in the prospectus whether or not the purchaser has received the prospectus and, if the prospectus contains an untrue statement of a material fact or omits to state a material fact necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, a person who at the time of the issue of a receipt for the prospectus is a director of a corporation issuing the securities, or a person who signed the certificate required by section 15.14, is liable to compensate the purchaser for loss or damage he has sustained as a result of such purchase, unless it is proved by the person sought to be made liable that

Civil remedy
¶ 416, 417

- (a) the prospectus was sent to the Registrar without his knowledge or consent and that on becoming aware of such sending he immediately gave reasonable public notice that it was so sent,
- (b) after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser,

on becoming aware of an omission or an untrue statement therein, he withdrew his consent thereto and gave reasonable public notice of his withdrawal and his reasons therefor,

- (c) with respect to an untrue statement, he had reasonable grounds to believe that the statement was true,
- (d) he had no reasonable grounds to believe that an expert who made a statement in a prospectus or whose report or valuation was contained or fairly summarized therein was not competent to make such statement, valuation or report, or
- (e) with respect to an untrue statement purporting to be a statement made by a public official or contained in what purports to be a copy of or extract from an official or public document, he had reasonable grounds to believe that it was a correct and fair representation of the statement or copy of or extract from the document.

15.29

Interpretation
“residence”

¶ 418

Soliciting
at residence

Exception

Solicitation by
body corporate

- (1) In this section “residence” includes a building or part of a building in which the occupant resides permanently or temporarily and premises appurtenant thereto.
- (2) No person shall call at a residence, or telephone from within Canada to a residence within or outside Canada, for the purpose of trading in a security with a member of the public.
- (3) Subsection (2) does not apply
 - (a) if the person calls at or telephones to the residence,
 - (i) of a close personal friend, a business associate or a customer with whom or on behalf of whom the person calling or telephoning has been in the habit of trading in securities, or
 - (ii) of a person who has requested in writing that information respecting a specific security be furnished him by the person so calling or telephoning, but in such case the person so calling or telephoning shall call or telephone only in reference to that security, or
 - (b) to a trade in a security in respect of which a prospectus is not required.
- (4) For the purposes of subsections (2) and (3), a body corporate is deemed to have called or telephoned if a director,

officer, employee or agent of the body corporate calls or telephones on its behalf.

- (5) A person who fails to comply with subsection (2) is guilty of an offence. Offence

15.30

- (1) If a corporation makes a distribution to the public of a security in a province of foreign country having a law which requires as a condition precedent to such distribution that a prospectus, statement of material facts, registration statement or similar document relating to such distribution be filed with or qualified by a public authority, and which exempts specified trades and securities, the Registrar may, whether or not a prospectus, statement of material facts, registration statement or similar document has been so filed or qualified in the province or foreign country, make an order exempting the corporation from any provisions of this Part upon such terms as he thinks fit. Qualification
by
co-ordination
¶ 419, 420
- (2) If the Registrar makes an order under subsection (1), sections 15.26, 15.27, and 15.28 apply mutatis mutandis to a distribution referred to in subsection (1) as if section 15.02 or 15.18 applied thereto, and the prospectus, statement of material facts, registration statement or similar document referred to in subsection (1) is deemed to be a prospectus for the purposes of sections 15.26, 15.27 and 15.28. Application

PART 16.00

Take-over Bids

Interpretation
¶ 426 to 429
“corporation”

16.01

In this Part,

“exempt offer”

(a) “corporation” means a body corporate incorporated under the laws of the Parliament of Canada or continued under this Act and not discontinued under this Act;

(b) “exempt offer” means an offer

(i) to purchase shares by way of separate agreements with not more than 15 shareholders,

(ii) to purchase shares through a recognized stock exchange or in the over-the-counter market,

(iii) to purchase shares of a corporation that has fewer than 15 shareholders, two or more joint holders being counted as one shareholder, or

(iv) exempted by court order under section 16.10;

“offeree”

(c) “offeree” means a person to whom a take-over bid is made;

“offeree corporation”

(d) “offeree corporation” means a corporation the shares of which are the object of a take-over bid;

“offeror”

(e) “offeror” means a person, other than an agent, who makes a take-over bid, and includes two or more persons who, directly or indirectly,

(i) make take-over bids jointly or in concert, or

(ii) intend to exercise jointly or in concert voting rights attached to shares which are the object of a take-over bid;

“share”

(f) “share” means a share or a security convertible into a share of a corporation carrying voting rights under all circumstances or by reason of the occurrence of a contingency that has occurred and is continuing, and includes options and rights to purchase such a share or such a convertible security;

“take-over bid”

(g) “take-over bid” means an offer, other than an exempt offer, made by an offeror to shareholders generally at approximately the same time to purchase shares which, if combined with shares already beneficially owned or controlled, directly or indirectly, by the offeror or an associate of the offeror on the date of the take-over bid, would exceed 10 per cent of the issued shares of an offeree corporation.

16.02

Time to deposit
shares

(1) The period of time within which shares may be deposited pursuant to a take-over bid shall be 20 days after the date of the take-over bid.

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| (2) Shares deposited pursuant to a take-over bid may be withdrawn by or on behalf of an offeree at any time within 10 days after the date of the take-over bid. | Withdrawal |
| (3) Subject to section 16.03, shares deposited pursuant to a take-over bid shall not be taken up by the offeror until 10 days after the date of the take-over bid. | Waiting period |
| (4) Shares deposited pursuant to a take-over bid shall, if the terms stipulated by the offeror and not subsequently waived by him have been complied with, be taken up and paid for within 14 days after the last day within which shares may be deposited pursuant to the take-over bid. | Payment |
| (5) If a greater number of shares is deposited pursuant to the take-over bid than the offeror is bound or willing to take up and pay for, the shares taken up by the offeror shall be taken up rateably, disregarding fractions, according to the number of shares deposited by each offeree. | Rateable payment |
| (6) If the terms of a take-over bid are amended by increasing the consideration offered for the shares, the offeror shall pay the increased consideration to each offeree whose shares are taken up pursuant to the take-over bid whether or not such shares have been taken up by the offeror before the amendment of the take-over bid. | Amended price |
| (7) If the terms of a take-over bid are amended other than by increasing the consideration offered, the take-over bid as amended is deemed to be a new take-over bid and the original take-over bid is deemed revoked. | Constructive new take-over bid |

16.03

If a take-over bid is made for less than all the shares of an offeree corporation, shares deposited pursuant to the take-over bid shall not be taken up until 20 days after the date of the take-over bid.

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16.04

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| (1) A take-over bid, including a copy of the take-over bid circular in prescribed form, shall be sent concurrently by prepaid mail to each director, to each shareholder of the offeree corporation resident in Canada and to the Registrar. | Sending take-over bid ¶ 431 |
| (2) A take-over bid is deemed to be dated as of the date on which it is mailed. | Date of take-over bid |
| (3) For the purposes of this section and section 16.07, a shareholder of an offeree corporation is deemed resident in Canada if an address within Canada is shown opposite his name in the securities register maintained under section 6.03. | Shareholders in Canada |

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| Arrangements for funds ¶ 432 | <p>16.05</p> <p>If a take-over bid states that the consideration for the shares deposited pursuant thereto is to be paid in money or partly in money, the offeror shall make adequate arrangements to ensure that funds are available to make the required money payment for the shares that the offeror has offered to purchase pursuant to the take-over bid.</p> |
| Share-for-share bids ¶ 433 | <p>16.06</p> <p>If a take-over bid states that the consideration for the shares of the offeree corporation is to be, in whole or in part, securities of the offeror or any other body corporate, the take-over bid circular shall be accompanied by a prospectus that complies with Part 15.00.</p> |
| Directors' circular ¶ 434 | <p>16.07</p> <p>(1) If the directors or a director of an offeree corporation recommend acceptance or rejection of a take-over bid, the directors or director shall send by prepaid mail a directors' circular in prescribed form to each director, to each shareholder of the offeree corporation resident in Canada and to the Registrar.</p> |
| Offence | <p>(2) A director of an offeree corporation who knowingly authorizes, permits or acquiesces in a recommendation to the shareholders of the offeree corporation and who fails to comply with subsection (1) is guilty of an offence.</p> |
| Expert's consent ¶ 435 | <p>16.08</p> <p>A report, opinion or statement of a solicitor, auditor, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him shall not be included in a take-over bid circular or a directors' circular unless that person has consented in writing to the use of the report, opinion or statement.</p> |
| Approval of take-over bid ¶ 436 | <p>16.09</p> <p>(1) If a take-over bid is made by or on behalf of a body corporate, the directors of the body corporate shall approve the take-over bid.</p> |
| Approval of directors' circular | <p>(2) The directors of an offeree corporation shall approve a directors' circular.</p> |
| Exemption order ¶ 437 | <p>16.10</p> <p>(1) Any interested person may apply to a court having jurisdiction in the place where the offeree corporation has its</p> |

registered office for an order exempting a take-over bid from any of the provisions of this Part, and the court may, if it is satisfied that an exemption would not unfairly prejudice a shareholder of the offeree corporation, make an exemption order on such terms as it thinks fit, which order may have retrospective effect.

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| (2) | The applicant shall give the Registrar not less than 10 days notice of the hearing of an application under subsection (1), and the Registrar is entitled to appear in person or by counsel and to be heard. | Notice to Registrar |
| (3) | The Registrar shall set out in the periodical referred to in section 10.03 the particulars of exemptions granted under this section. | Publication |

16.11

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| (1) | An offeror who fails to comply with section 16.02, 16.03, 16.04 or 16.05 is guilty of an offence and, if such offeror is a body corporate, a director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the offence is also guilty of an offence. | Offence ¶ 438 |
| (2) | If a take-over bid circular or directors' circular contains an untrue statement of a material fact or omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, an interested person may apply to a court for an order restraining the take-over bid to which the take-over bid circular or directors' circular relates. | Restraining order ¶ 438 |

PART 17.00

Liquidation and Dissolution

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| Interpretation “court” ¶ 442 | 17.01 In this Part “court” means a court having jurisdiction in the place where the corporation has its registered office. |
| Application of Part ¶ 439 to 441, 443 | 17.02 (1) This Part does not apply to a corporation that is insolvent within the meaning of the Bankruptcy Act or that is a bankrupt within the meaning of that Act. (2) Any proceedings taken under this Part to dissolve or to liquidate and dissolve a corporation shall be stayed if the corporation is at any time found to be insolvent within the meaning of the Bankruptcy Act. |
| Staying proceedings | |
| Dissolution before commencing business ¶ 444 | 17.03 (1) A corporation that has not commenced business and that has not issued any shares may be dissolved at any time upon the authorization of all the incorporators or first directors. (2) A corporation that has no property may be dissolved at any time by a unanimous resolution of the shareholders. (3) Articles of dissolution in prescribed form shall be delivered to the Registrar. (4) Upon delivery to him of articles of dissolution the Registrar shall issue a certificate of dissolution in accordance with section 20.10. (5) Upon issue of a certificate of dissolution the corporation ceases to exist. |
| Dissolution if no property ¶ 444 | |
| Articles of dissolution | |
| Certificate of dissolution | |
| Effect of certificate | |
| Proposing liquidation and dissolution ¶ 445, 446, 447 | 17.04 (1) The directors or a shareholder may propose the voluntary liquidation and dissolution of a corporation. (2) Notice of any meeting of shareholders at which voluntary liquidation and dissolution is to be proposed shall set out the terms thereof. (3) A corporation may by special resolution of the shareholders and, where it has issued more than one class of shares, a special resolution of the holders of each class whether or not they are otherwise entitled to vote, liquidate and dissolve. (4) A statement of intent to dissolve in prescribed form shall be sent to the Registrar. (5) Upon delivery to him of a statement of intent to dissolve the Registrar shall issue a certificate of intent to dissolve in accordance with section 20.10. |
| Notice of meeting | |
| Shareholders resolution | |
| Statement of intent to dissolve | |
| Certificate of intent to dissolve | |

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| Effect of certificate | (6) Upon issue of a certificate of intent to dissolve the corporation shall cease to carry on business except to the extent necessary for the liquidation, but its corporate existence shall continue until the Registrar issues a certificate of dissolution. |
| Liquidation | <p>(7) After issue of a certificate of intent to dissolve the corporation shall</p> <ul style="list-style-type: none"> (a) immediately cause notice thereof to be mailed or delivered to each known creditor of the corporation, (b) forthwith publish notice thereof once a week for 4 successive weeks in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice thereof in each place in Canada where the corporation was carrying on business at the time it sent the statement of intent to dissolve to the Registrar, (c) proceed to collect its property, dispose of properties that are not to be distributed in kind to its shareholders, discharge all obligations, and do all other acts required to liquidate its business and affairs, and (d) after giving the notice required under paragraphs (a) and (b) and paying or adequately providing for the payment or discharge of all its duties and liabilities, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights. |
| Supervision by court | (8) A director, officer, security holder or creditor may, at any time during the liquidation of a corporation, apply to a court for an order that the liquidation be continued under the supervision of the court as provided in this Part, and upon such application the court may so order and make any further order it thinks fit. |
| Revocation | (9) At any time after issue of a certificate of intent to dissolve and before issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked by sending to the Registrar a statement of revocation of intent to dissolve in prescribed form, if such revocation is approved in the same manner as the resolution under subsection (3). |
| Certificate of revocation of intent to dissolve | (10) Upon delivery to him of a statement of revocation of intent to dissolve the Registrar shall issue a certificate of revocation of intent to dissolve in accordance with section 20.10. |

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| Effect of certificate | (11) Upon issue of a certificate of revocation of intent to dissolve the revocation is effective and the corporation may continue to carry on its business or businesses. |
| Right to dissolve | (12) Where a certificate of intent to dissolve has not been revoked, if <ul style="list-style-type: none"> (a) the corporation has complied with subsection (7), and (b) the shareholders have by resolution designated a person who shall keep the documents and records of the corporation for 6 years from the date of dissolution, the corporation shall prepare articles of dissolution. |
| Articles of dissolution | (13) Articles of dissolution in prescribed form shall be delivered to the Registrar. |
| Certificate of dissolution | (14) Upon delivery to him of articles of dissolution the Registrar shall issue a certificate of dissolution in accordance with section 20.10. |
| Effect of certificate | (15) Upon issue of a certificate of dissolution the corporation ceases to exist. |

17.05

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| Cancelling certificate of incorporation ¶ 448, 449, 450 | <p>(1) If a corporation</p> <ul style="list-style-type: none"> (a) has not commenced business within 3 years after the date of its certificate of incorporation, (b) has not carried on its business or exercised its powers for 3 consecutive years, or (c) is in default for a period of one year in sending to the Registrar any fee, notice or document required by this Act, <p>the Registrar may, subject to subsections (2) and (3), cancel its certificate of incorporation or he may apply to a court for an order dissolving the corporation, in which case section 17.10 applies.</p> |
| Publication | <p>(2) The Registrar shall not cancel a certificate of incorporation until he has</p> <ul style="list-style-type: none"> (a) given 60 days notice of his decision to cancel to the corporation and to each director thereof, and has (b) published notice by one insertion in the Canada Gazette and one publication in a newspaper published or distributed in the place where the corporation has its registered office. |
| Certificate of dissolution | (3) Unless cause to the contrary has been shown or an order has been made by a court under section 19.09, the Registrar may, after expiry of the period referred to in subsec- |

tion (2), issue a certificate of dissolution in prescribed form.

(4) Upon issue of a certificate of dissolution the corporation ceases to exist. Effect of certificate

(5) If a corporation is dissolved under this section any interested person may apply to the Registrar within 2 years after the dissolution and the Registrar may in his discretion revive the corporation, and thereafter the corporation, subject to the terms imposed by the Registrar and to the rights acquired by any person after its dissolution, is revived and has all the rights and privileges and is subject to all the duties and liabilities to the same extent as if it had not been dissolved. Revival

17.06

(1) The Registrar or any interested person may apply to a court for an order dissolving a corporation if the corporation has Grounds for dissolution

- (a) failed for two or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders, ¶ 451, 452
- (b) failed to comply with section 4.03, 13.03 or 13.05, or has
- (c) procured any certificate under this Act by misrepresentation.

(2) Upon an application under this section or section 17.05 the court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the court, or the court may make any other order it thinks fit. Dissolution order

(3) Upon receipt of an order under this section or section 17.05 the Registrar shall Certificate

- (a) if the order is to dissolve the corporation, issue a certificate of dissolution in prescribed form, or
 - (b) if the order is to liquidate and dissolve the corporation under the supervision of the court, issue a certificate of intent to dissolve in prescribed form
- and shall publish notice of such order by one insertion in the Canada Gazette.

(4) Upon issue of a certificate of dissolution the corporation ceases to exist. Effect of certificate

(5) Section 17.10 applies if an order is made under paragraph (b) of subsection (3). Application of s. 17.10

17.07

(1) A court may order the liquidation of the property and the dissolution of a corporation: Further grounds for liquidation and dissolution
¶ 453 to 456, 458

- (a) Upon the application of a shareholder if it appears to the court that in respect of a corporation or any of its affiliated corporations
 - (i) any act or omission of the corporation or any of its affiliates effects a result,
 - (ii) the business or affairs of the corporation or any of its affiliates have been carried on or conducted in a manner, or
 - (iii) the powers of the directors of the corporation or any of its affiliates have been exercised in a manner that is oppressive or unfairly prejudicial to or in disregard of the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of;
 - (b) Upon the application of a shareholder if the court is satisfied that
 - (i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or
 - (ii) it is just and equitable that the corporation should be liquidated and dissolved;
 - (c) Upon the application of a director, officer, security holder or creditor under subsection (8) of section 17.04 requesting that a voluntary liquidation be continued under the supervision of the court;
 - (d) Upon an application for the liquidation and dissolution of the corporation under section 17.06.
- (2) An applicant under this section may apply in the alternative for an order under section 19.04.
 - (3) Section 19.05 applies when an application is made under this section.

Alternative
order
¶ 457

Application
of s. 19.05

17.08

Application for
supervision

- (1) An application to a court to supervise a voluntary liquidation and dissolution under subsection (8) of section 17.04 shall state the reasons, verified by an affidavit of the applicant, why the court should supervise such liquidation and dissolution.
- (2) If a court makes an order applied for under subsection (8) of section 17.04, the liquidation and dissolution of the corporation shall continue under the supervision of the court in accordance with the provisions of this Act, as if

Court
supervision

such liquidation and dissolution had been ordered by the court under section 17.07.

17.09

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| (1) An application to a court under subsection (1) of section 17.07 shall state the reasons, verified by an affidavit of the applicant, why the corporation should be liquidated and dissolved. | Application to court |
| (2) Upon such application the court shall make an order requiring the corporation and any person having an interest in it or claim against it to show cause, at a time and place therein specified, not less than 4 weeks after the date of the order, why the corporation should not be liquidated and dissolved. | Show cause order |
| (3) Upon such application the court may order the officers and directors of the corporation to furnish to the court all material information known or reasonably ascertainable by them, including <ul style="list-style-type: none">(a) financial statements of the corporation,(b) the name and address of each shareholder of the corporation, and(c) the name and address of each creditor and claimant, including any with unliquidated, future or contingent claims and any with whom the corporation has a contract. | Powers of court |
| (4) A copy of an order made under subsection (2) shall be <ul style="list-style-type: none">(a) published as prescribed in the order, at least once in each week before the time appointed for the hearing, in a newspaper published or distributed in the place where the corporation has its registered office, and(b) served upon the Registrar and each person named in the order by personal service or registered mail at least 20 days before the date of the hearing. | Publication |
| (5) Publication and service of the order shall be effected by the corporation or by any other person the court may order. | Person responsible |

17.10

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| In connection with the liquidation and dissolution of a corporation the court may, if it is satisfied that the corporation is able to pay or adequately provide for the payment or discharge of all its duties and liabilities, make any order it thinks fit, and without limiting the generality of the foregoing the court may <ul style="list-style-type: none">(a) order liquidation, | Powers of court |
|---|-----------------|

- (b) appoint a liquidator, with or without security, and fix the remuneration of and replace a liquidator,
- (c) appoint inspectors or referees, specify their powers and fix the remuneration of and replace inspectors or referees,
- (d) determine the notice to be given to any interested person, or dispense with notice to any person,
- (e) determine the validity of any claims made against the corporation,
- (f) at any stage of the proceedings, restrain the directors and officers from
 - (i) exercising any powers of office, or
 - (ii) collecting or receiving any debt or other property of the corporation, and from paying out or transferring any property of the corporation other than as permitted by the court,
- (g) determine and enforce the duty or liability of an officer, director or shareholder
 - (i) to the corporation, or
 - (ii) for a duty or liability of the corporation,
- (h) approve the payment, satisfaction or compromise of claims against the corporation, the retention of assets for such purpose, and determine the adequacy of provisions for the payment or discharge of duties and liabilities of the corporation, whether liquidated, unliquidated, future or contingent,
- (i) make an order with respect to the disposition or destruction of the documents and records of the corporation,
- (j) upon the application of a creditor, the inspectors or the liquidator, give directions on any matter arising in the liquidation,
- (k) after notice has been given to all interested parties, relieve a liquidator from any omission or default on such terms as the court thinks fit and confirm any act of the liquidator,
- (l) subject to section 17.18, approve any proposed interim or final distribution to shareholders in money or in kind,
- (m) order the disposition of any property belonging to creditors or shareholders who cannot be found,
- (n) upon the application of a director, officer, security holder, creditor or the liquidator,
 - (i) stay the liquidation on the terms and subject to the conditions the court thinks fit,

- (ii) order that the liquidation proceedings be continued or discontinued, or
- (iii) order that the liquidator restore to the corporation all its remaining property, and
- (o) after the liquidator has rendered his final account to the court, order dissolution of the corporation.

17.11

The liquidation of the property of a corporation is deemed to commence when a court makes an order therefor.

Effect of order

17.12

If a court makes an order of liquidation

Cessation of business and powers

- (a) the corporation shall continue in existence but shall cease to carry on business, except the business that is in the opinion of the liquidator required for an orderly and beneficial liquidation, and
- (b) all the powers of the directors and shareholders cease, except as specifically authorized by the court or the liquidator.

17.13

- (1) When making an order for the liquidation of a corporation or at any time thereafter, the court may appoint any person, including a director, officer or shareholder or any other corporation as liquidator of the property of the corporation.
- (2) At any time after an order for the liquidation of a corporation, if no liquidator has been appointed or if the office of liquidator is vacant, the property of the corporation shall be under the control of the court.

Appointment of liquidator

Vacancy

17.14

Upon his appointment, the property and rights of the corporation wherever situated vest in the liquidator for the benefit of the claimants, creditors and shareholders of the corporation.

Vesting of property

17.15

A liquidator shall

Duties of liquidator

- (a) immediately give notice of his appointment to the Registrar and to each claimant and creditor known to the liquidator,
- (b) forthwith publish notice by one insertion in the Canada Gazette and by insertion once a week for 2 successive weeks in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice thereof in each place in Canada where the corporation carries on business, requiring any person

- (i) indebted to the corporation to render an account and pay to the liquidator at the time and place specified any amount owing,
- (ii) possessing property of the corporation to deliver it to the liquidator at the time and place specified, and
- (iii) having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present written particulars thereof in writing to the liquidator not later than 2 months after the first publication of the notice,
- (c) take into his custody and control all the property of the corporation,
- (d) open and maintain a trust account for all moneys of the corporation,
- (e) keep accounts of all moneys of the corporation received and paid out by him,
- (f) maintain separate lists of all shareholders, creditors and other persons having claims against the corporation,
- (g) if at any time he determines that the corporation is unable to pay or adequately provide for the payment or discharge of all its duties and liabilities, apply to the court for directions,
- (h) deliver to the court and to the Registrar, at least once in every 6-month period after his appointment, or more often as the court may require, financial statements of the corporation in the form required by section 13.01 or in such other form as the liquidator may think proper or the court may require, and
- (i) after his final accounts are approved by the court, distribute any remaining property of the corporation among the shareholders according to their respective rights.

17.16

Powers of
liquidator

(1) A liquidator may

- (a) retain legal counsel, accountants or other professional advisers,
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the corporation,
- (c) carry on the business of the corporation as required for an orderly and beneficial liquidation,

- (d) sell by public auction or private sale any property of the corporation,
 - (e) do all acts and execute any documents in the name and on behalf of the corporation,
 - (f) borrow money on the security of the property of the corporation,
 - (g) settle or compromise any claims by or against the corporation, and
 - (h) do all other things necessary for the liquidation and distribution of the property of the corporation.
- (2) A liquidator is not liable if he relies and acts in good faith upon
- (a) financial statements of the corporation represented to him by an officer of the corporation to be correct or stated in a written report of the auditor of the corporation fairly to reflect the financial condition of the corporation, or
 - (b) an opinion, report or statement of legal counsel, accountant or other professional adviser retained by the liquidator.
- (3) If a liquidator has reason to believe that any person has in his possession or under his control, or has concealed, withheld or misappropriated any property of the corporation, he may apply to the court for an order that such person appear before the court at the time and place designated and be examined.
- (4) If such examination discloses that a person has concealed, withheld or misappropriated property of the corporation, the court may order him to restore it or pay compensation to the liquidator.
- 17.17**
- (1) A liquidator shall pay the costs of liquidation out of the property of the corporation and pay or make adequate provisions for all claims against the corporation.
- (2) Within one year after his appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator shall apply to the court for approval of his final accounts and for an order permitting him to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights, or for an extension of time, setting out the reasons therefor.

Reliance on statements

Application for examination

Power of court

Costs of liquidation

Final account

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| Shareholder application | (3) If a liquidator fails to make the application required by subsection (2), a shareholder of the corporation may apply to the court for an order that the liquidator show cause why a final accounting and distribution should not be made. |
| Publication | (4) The liquidator shall give not less than 10 days notice of his intention to make an application under subsection (2) <ul style="list-style-type: none"> (a) to each inspector, appointed under section 17.10, each shareholder and to any person who provided a security or fidelity bond for the liquidation, and (b) by one publication in a newspaper published or distributed in the place where the corporation has its registered office. |
| Final order | (5) If it approves the final account rendered by the liquidator, the court shall make a final order <ul style="list-style-type: none"> (a) directing the Registrar to issue a certificate of dissolution, (b) directing the custody or disposal of the documents and records of the corporation, and (c) subject to subsection (6), discharging the liquidator. |
| Delivery of order | (6) The liquidator shall forthwith send a certified copy of the court order to the Registrar. |
| Certificate of dissolution | (7) Upon receipt of the court order the Registrar shall issue a certificate of dissolution in accordance with section 20.10. |
| Effect of certificate | (8) Upon issue of a certificate of dissolution the corporation ceases to exist. |

17.18

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| Right to distribution in money | (1) If in the course of liquidation of a corporation the shareholders resolve or a liquidator proposes to <ul style="list-style-type: none"> (a) exchange all or substantially all the property of the corporation for securities of another body corporate that are to be distributed to the shareholders, or (b) distribute all or part of the property of the corporation to the shareholders in kind, a shareholder may apply to the court for an order requiring a distribution of the property of the corporation in money. |
| ¶ 461 | |
| Powers of court | (2) Upon an application under subsection (1) the court may order <ul style="list-style-type: none"> (a) that all the property of the corporation be converted into and distributed in money, or (b) that the claims of any shareholder applying under this section be satisfied by a distribution in money, in which case subsections (20) to (22) of section 14.17 apply. |

17.19

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| (1) A person who has been granted custody of the documents and records of a dissolved corporation is liable to produce such documents and records until 6 years after the date of its dissolution or until the expiry of such other period that may be ordered under subsection (5) of section 17.17. | Custody of documents |
| (2) A person who fails to comply with subsection (1) is guilty of an offence. | Offence |

17.20

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| (1) In this section, “shareholder” includes the heirs, legal representatives and assigns of a shareholder. | Interpretation “shareholder” |
| (2) Notwithstanding that a corporation has been dissolved under this Act. (a) any civil, criminal or administrative action or proceeding commenced by or against the corporation before its dissolution may be continued as if the corporation had not been dissolved, (b) any civil, criminal or administrative action or proceeding may be brought against the corporation within 2 years after its dissolution as if the corporation had not been dissolved, and (c) any property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available for such purpose. | Continuation of actions |
| (3) Service of a document on a corporation after its dissolution is deemed sufficiently made if it is served upon a person shown in the last notice filed under section 9.05 or 9.12. | Service |
| (4) Notwithstanding that a corporation has been dissolved, a shareholder to whom any of its property has been distributed is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder upon such distribution, and an action to enforce such liability may be brought within 2 years after the date of the dissolution of the corporation. | Reimbursement |
| (5) If there are numerous shareholders, a court may permit a representative action to be brought against the shareholders as a class, subject to such conditions as the court thinks fit and, if the plaintiff establishes his claim, the court may refer the proceedings to a referee or other officer of the court, who may add as a party to the proceedings before him each shareholder who can be found, determine, subject to subsection (4), the amount that each shareholder | Representative action |

shall contribute towards satisfaction of the plaintiff's claim, and direct payment of the sums so determined.

17.21

Unknown
claimants

(1) Upon the dissolution of a corporation, the portion of the property distributable to a creditor or shareholder who is unknown or cannot be found shall be converted into money and paid to the Receiver-General of Canada.

Constructive
satisfaction

(2) A payment under subsection (1) is deemed to be in satisfaction of the debt or claim of such creditor or shareholder.

Recovery

(3) If at any time a creditor or shareholder, or his heirs, legal representatives or assigns, establishes that he is entitled to any moneys paid to the Receiver-General of Canada under this section, or any part thereof, the Receiver-General of Canada shall pay an equivalent amount to him.

17.22

Vesting in
Crown

Subject to section 17.21, property of a corporation that has not been disposed of at the date of its dissolution shall vest in the Crown in right of Canada.

PART 18.00

Investigation

18.01

Investigation

¶ 442, 463
to 470

(1) Subject to subsection (3), one or more holders of shares representing in the aggregate not less than 5 per cent of the issued shares or 5 per cent of the issued shares of a class of shares of a corporation, or the Registrar, may apply to a court having jurisdiction in the place where the corporation has its registered office, ex parte or upon such notice as the court may require, for an order directing an investigation of the corporation and any of its affiliated corporations.

Grounds

¶ 471

(2) If upon an application under subsection (1) it appears to the court that

(a) the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person,

(b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or that the powers of the directors are or have been exercised in a manner oppressive or unfairly prejudicial to or in disregard of the interests of a security holder,

(c) the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose, or

(d) persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

the court may order an investigation of the corporation and any of its affiliated corporations, appoint an inspector for the purpose, and make any further order it thinks fit.

Notice to
Registrar

(3) If a shareholder makes an application under subsection (1) he shall give the Registrar reasonable notice thereof, and the Registrar is entitled to appear in person or by counsel and to be heard.

No security
for costs

(4) An applicant under this section shall not be required to give security for costs.

18.02

Powers
of court

(1) In connection with an investigation under this Part the court may make any order it thinks fit and without limiting the generality of the foregoing the court may

(a) order an investigation,

- (b) appoint an inspector and fix the remuneration of and replace an inspector,
 - (c) determine the notice to be given to any interested person, or dispense with notice to any person,
 - (d) authorize an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine any thing and make copies of any document or record found on the premises,
 - (e) require any person to produce documents or records to the inspector,
 - (f) authorize an inspector to conduct a hearing, administer oaths, and examine any person upon oath, and may prescribe rules for the conduct of the hearing,
 - (g) require any person to attend a hearing conducted by an inspector and give evidence upon oath,
 - (h) give directions to the inspector or any interested person on any matter arising in the investigation,
 - (i) order the inspector to make an interim or final report to the court,
 - (j) determine whether a report of an inspector should be published and, if so, order the Registrar to publish the report in whole or in part or to send copies to any person the court designates, and
 - (k) order an inspector to discontinue an investigation.
- (2) The court shall send to the Registrar a copy of every report made by an inspector under this Part.

Copy of
report
to Registrar

18.03

- (1) An inspector under this Part has the powers set out in the order of the court that appointed him.
- (2) An inspector shall upon request give to an interested person a copy of any court order made under subsection (1) of section 18.02.

Power of
inspector

Copy of
court order

18.04

- (1) Any interested person may apply to the court for an order that a hearing conducted by an inspector under this Part shall be heard in camera and for directions on any matter arising in the investigation.
- (2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part has a right to be represented by counsel.

Hearing
in camera

Right
to counsel

Criminating
statements

18.05

No person shall be excused from attending and giving evidence and producing documents and records to an inspector under this Part by reason only that the evidence tends to criminate him or subject him to any proceeding or penalty, but no such evidence shall be used or is receivable against him in any proceeding thereafter instituted against him under a statute of Canada, other than a prosecution for perjury in giving the evidence.

Absolute
privilege
(defamation)

18.06

Any oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

Information
respecting
ownership and
control of
securities

¶ 473

18.07

(1) If the Registrar is satisfied that, for the purposes of Part 10.00 or Part 16.00, there is reason to enquire into the ownership or control of a security of a corporation or any of its affiliates, the Registrar may require any person whom he reasonably believes has or has had an interest in the security or acts or has acted on behalf of a person with such an interest, to report to him

(a) information that such person has or can reasonably be expected to obtain as to present and past interests in the security, and

(b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the security on behalf of the persons so interested.

Constructive
interest in
securities

(2) For the purposes of subsection (1), a person is deemed to have an interest in a security if

(a) he has a right to vote or to acquire or dispose of the security or any interest therein,

(b) his consent is necessary for the exercise of the rights or privileges of any other person interested in the security, or

(c) any other person interested in the security can be required or is accustomed to exercise rights or privileges attached to the security in accordance with his instructions.

Publication

(3) The Registrar shall publish in the periodical referred to in section 10.03 the particulars of information obtained by him under this section, if the particulars

(a) are required by this Act or the regulations to be disclosed, and

(b) have not previously been so disclosed.

- (4) A person who fails to comply with this section is guilty of an offence and, if the person is a body corporate, a director or officer of the body corporate who knowingly authorizes, permits or acquiesces in such failure is also guilty of an offence.

PART 19.00

Remedies, Offences and Penalties

19.01

In this Part,

- (a) “action” means an action brought under this Act or any other law;
- (b) “complainant” includes
 - (i) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,
 - (ii) a director or officer of a corporation or of any of its affiliates,
 - (iii) the Registrar, and
 - (iv) any other person who, in the discretion of a court, is a proper person to make an application under this Part.

19.02

- (1) Subject to subsection (2), a complainant may apply to a court for consent to bring an action in the name and on behalf of a corporation or any of its subsidiaries, or intervene in an action to which any such body corporate is a party for the purpose of prosecuting, defending or discontinuing the action on behalf of the body corporate.
- (2) No action may be brought and no intervention in an action may be made under subsection (1) unless the court is satisfied that
 - (a) the complainant has made reasonable efforts to cause the directors of the corporation or its subsidiary to bring, diligently prosecute or defend or discontinue the action,
 - (b) the complainant is acting in good faith, and
 - (c) it is prima facie in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

19.03

In connection with an action brought or intervened in under section 19.02 the court may at any time make any order it thinks fit and, without limiting the generality of the foregoing, a court may make an order

- (a) requiring the corporation or its subsidiary to pay to the complainant the costs of an application under subsection (1) of section 19.02, including legal fees and disbursements,

- (b) restraining any person from committing a breach of a duty owed to the corporation or its subsidiary,
- (c) authorizing the complainant to control the conduct of the action,
- (d) giving directions for the conduct of the action,
- (e) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary, and
- (f) requiring the corporation or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

19.04

- (1) A complainant may apply to a court for an order under this section.

Application
to court

¶ 484

- (2) If upon an application under subsection (1) it appears to the court that in respect of a corporation or any of its affiliated corporations

Grounds

¶ 485

- (a) any act or omission of the corporation or any of its affiliates effects a result,
- (b) the business or affairs of the corporation or any of its affiliates have been carried on or conducted in a manner, or
- (c) the powers of the directors of the corporation or any of its affiliates have been exercised in a manner

that is oppressive or unfairly prejudicial to or in disregard of the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.

- (3) In connection with an application under this section the court may make any interim or final order it thinks fit and, without limiting the generality of the foregoing, the court may make an order

Powers of
court

¶ 486

- (a) restraining the conduct complained of,
- (b) appointing a receiver or receiver-manager,
- (c) amending the articles or by-laws or creating or amending a unanimous shareholder agreement to regulate a corporation's affairs,
- (d) directing an issue or exchange of securities,
- (e) directing changes in the directors as permitted by subsection (3) of section 14.18,

| | |
|----------------------------------|---|
| | <ul style="list-style-type: none"> (f) directing a corporation, subject to subsection (6), or any other person, to purchase securities of a security holder, (g) directing a corporation, subject to subsection (6), or any other person, to pay to a security holder any part of the moneys paid by him for securities, (h) varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract, (i) requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 13.01 or an accounting in such other form as the court may determine, (j) compensating an aggrieved person, (k) directing rectification under section 19.06, and (l) dismissing the application. |
| Duty of directors | (4) If an order made under this section directs amendment of the articles or by-laws of a corporation, |
| ¶ 486 | <ul style="list-style-type: none"> (a) the directors shall forthwith comply with subsection (4) of section 14.18, and (b) no other amendment to the articles or by-laws shall be made without the consent of the court, until a court otherwise orders. |
| Exclusion | (5) A shareholder is not entitled to dissent under section 14.17 if an amendment to the articles is effected under this section. |
| Limitation | <p>(6) A corporation shall not make a payment to a shareholder under paragraph (f) or (g) of subsection (3) if there are reasonable grounds for believing that</p> <ul style="list-style-type: none"> (a) the corporation is or would after the payment be unable to pay its liabilities as they become due, or (b) the value of the corporation's assets would thereby be less than the aggregate of its liabilities. |
| Valuation | (7) For the purposes of subsection (6) account may be taken of an unrealized increment in the value of any marketable asset, and no allowance is required to be made for depletion of a wasting asset. |
| Alternative order | (8) An applicant under this section may apply in the alternative for an order under section 17.07. |
| | 19.05 |
| Evidence of shareholder approval | (1) An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason |

only that it is shown that an alleged breach of a right, duty or obligation owed to the corporation or its subsidiary has been approved by the shareholders of such body corporate, but evidence of such approval may be taken into account by the court in making an order under section 17.07, 19.03 or 19.04.

admissible
as to weight

¶ 487

- (2) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the interests of any shareholder may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to such shareholder.

Court approval to discontinue

¶ 488

- (3) A complainant shall not be required to give security for costs in any application made or action brought or intervened in under this Part.

No security for costs

¶ 489

- (4) In an application made or an action brought or intervened in under this Part the court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant shall be accountable for such interim costs upon final disposition of the application or action.

Interim costs

¶ 489

19.06

- (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, deleted or omitted from the registers or records of a corporation, the corporation, a security holder of the corporation, or any aggrieved person may apply to a court for an order that the registers or records be rectified.

Application to court to rectify records

¶ 490

- (2) In connection with an application under this section the court may make any order it thinks fit, and without limiting the generality of the foregoing the court may make an order,

Powers of court

- (a) requiring the registers or records of the corporation to be rectified,
- (b) restraining the corporation from calling or holding a meeting of shareholders or paying a dividend before such rectification,
- (c) determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from the registers or records of the corpora-

tion, whether the issue arises between two or more security holders or alleged security holders, or between the corporation and any security holders or alleged security holders,

- (d) compensating an aggrieved party, and
- (e) dismissing the application.

19.07

Application
to court for
directions

¶ 491

The Registrar may apply to a court for directions in respect of any matter concerning his duties under this Act, and on such application the court may give directions and make any further order it thinks fit.

19.08

Notice of
refusal by
Registrar

¶ 492

- (1) If the Registrar refuses to file any articles or other document required by this Act to be filed by him before it becomes effective, he shall within 20 days after delivery thereof to him give written notice of his refusal to the person who sent the articles or document, giving reasons therefor.

Constructive
refusal

- (2) If the Registrar does not file or give written notice of his refusal to file any articles or document within 20 days after delivery thereof to him, he is deemed for the purposes of section 19.09 to have refused to file it.

19.09

Appeal from
Registrar's
decision

¶ 492

- A person who feels aggrieved by a decision of the Registrar to
- (a) refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him before it becomes effective,
 - (b) revoke the name of a corporation under section 2.08, or
 - (c) cancel a certificate of incorporation under section 17.05

may apply to a court for an order compelling the Registrar to reverse his decision, and upon such application the court may so order and make any further order it thinks fit.

19.10

Restraining
or compliance
order

¶ 493

If a corporation or a director, officer, employee, agent or auditor of a corporation does not comply with this Act, the regulations, articles, by-laws, or a unanimous shareholder agreement, a complainant or a creditor of the corporation may in addition to any other right he has, apply to a court for an order directing the corporation, director, officer, employee,

agent or auditor to comply with or restraining any such person from acting in breach of any provisions thereof, and upon such application the court may so order and make any further order it thinks fit.

19.11

Where this Act states that a person may apply to a court, the application may be made in a summary manner by petition, originating notice of motion, or otherwise as the rules of court provide, and subject to any order respecting security for costs, notice to interested parties, costs, or other order the court thinks fit.

Summary
application
to court

¶ 494

19.12

An appeal lies to the court of appeal from any order made by a court under this Act.

Appeal

19.13

- (1) A person who makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the Registrar or to any other person that contains an untrue statement of a material fact, or omits to state a material fact required therein or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made, is guilty of an offence and, if the person is a body corporate, a director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the untrue statement or omission is also guilty of an offence.
- (2) No person is guilty of an offence under subsection (1) if the untrue statement or omission was unknown to him and in the exercise of reasonable diligence could not have been known to him.

Offence

¶ 495

Immunity

19.14

A person who on summary conviction is found guilty of an offence against this Act is liable to a fine of not more than \$2,000 or, if such person is a body corporate, to a fine of not more than \$25,000.

Penalty

¶ 496

PART 20.00

General

Notice to
directors and
shareholders

¶ 498

20.01

(1) A notice or document required by this Act or the regulations to be delivered or sent to a shareholder or director of a corporation may be delivered personally or sent by prepaid mail addressed to

- (a) the shareholder at his latest address as shown in the records of the corporation or its transfer agent, and
- (b) the director at his latest address as shown in the records of the corporation or in the last notice filed under section 9.05 or 9.12.

Constructive
receipt

(2) A notice or document sent in accordance with subsection (1) to a shareholder or director of a corporation is deemed to be received at the time it would be delivered in the ordinary course of mail.

20.02

Notice to and
service upon
a corporation

¶ 499

A notice or document required to be delivered or sent to or served upon a corporation may be sent by registered mail to the registered office of the corporation shown in the last notice filed under section 4.01 and, if so sent, is deemed to be received or served at the time it would be delivered in the ordinary course of mail.

20.03

Waiver of
notice

¶ 500

Where a notice or document is required by this Act or the regulations to be delivered or sent the notice may be waived or the time for the notice may be waived or abridged at any time with the consent in writing of the person entitled thereto.

20.04

Certificate
of Registrar

¶ 501

(1) Where this Act requires or authorizes the Registrar to issue a certificate or to certify any fact the certificate shall be signed by the Registrar or by an officer authorized under section 20.08.

Prima facie
proof

(2) A certificate referred to in subsection (1) or a certified copy thereof, when introduced as evidence in any civil, criminal or administrative action or proceeding, is prima facie proof of the facts so certified without proof of the signature or official position of the person appearing to have signed the certificate.

20.05

Certificate
of corporation

¶ 502

(1) A certificate issued on behalf of a corporation stating any fact may be signed by a director, officer or agent of the corporation and is not required to be under seal.

- | | | |
|--|---|----------------------------------|
| <p>(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,</p> <p style="padding-left: 20px;">(a) a fact stated in a certificate referred to in subsection (1),</p> <p style="padding-left: 20px;">(b) a certified extract from a securities register of a corporation, or</p> <p style="padding-left: 20px;">(c) a certified copy of minutes or extract from minutes of a meeting of shareholders, directors or a committee of directors of a corporation,</p> <p>is prima facie proof of the facts so certified without proof of the signature or official position of the person appearing to have signed the certificate.</p> | <p>Prima facie proof</p> | |
| <p>(3) A security certificate issued by a corporation is prima facie proof of the title of the holder to the securities described in it.</p> | <p>Security certificate</p> <p>¶ 502</p> | |
| <p>20.06</p> <p>Where a notice or document is required to be sent to the Registrar under this Act the Registrar may accept a photostatic or photographic copy thereof.</p> | | <p>Photo copies</p> <p>¶ 503</p> |
| <p>20.07</p> | | |
| <p>(1) The Registrar may require that a document or a fact stated in a document required by this Act or the regulations to be sent to him shall be verified in accordance with subsection (2).</p> | <p>Proof required by Registrar</p> <p>¶ 504</p> | |
| <p>(2) Proof of a fact required by this Act or by the Registrar to be verified may be made by affidavit under oath or by statutory declaration under the Canada Evidence Act before any commissioner for oaths or for taking affidavits.</p> | <p>Form of proof</p> | |
| <p>20.08</p> | | |
| <p>(1) The Minister may appoint a Registrar and one or more Deputy Registrars to carry out the duties and exercise the powers vested in the Registrar under this Act.</p> | <p>Appointment of Registrar</p> <p>¶ 505</p> | |
| <p>(2) The Registrar may delegate in writing any of his duties or powers under this Act to one or more Deputy Registrars.</p> | <p>Delegation</p> | |
| <p>20.09</p> | | |
| <p>(1) The Governor in Council may make regulations</p> <p style="padding-left: 20px;">(a) prescribing any matter required or authorized by this Act to be prescribed by the regulations,</p> <p style="padding-left: 20px;">(b) requiring the payment of fees in respect of any action the Registrar is required or authorized to take under this Act and prescribing the amounts thereof,</p> | <p>Regulations</p> <p>¶ 506, 507</p> | |

- (c) prescribing the format and contents of notices and other documents required to be sent to the Registrar under this Act and the regulations, and
- (d) amending or repealing regulations made under this Act.

Forms

- (2) Notices and other documents required under this Act shall follow the prescribed forms.

20.10

Execution
and Filing

¶ 508, 509

Where this Act requires that articles or a statement relating to a corporation be sent to the Registrar, unless otherwise specifically provided:

- (a) Two copies, in this section called “duplicate originals”, of the articles or the statement shall be signed by an officer or director of the corporation or, in the case of articles of incorporation, by the incorporators;
- (b) The duplicate originals shall be verified by the person who signs, declaring that he signed the articles or statement, that the statements contained therein are true and, in the case of a person who signed in a representative capacity, declaring the capacity in which he signed and that he was authorized to sign;
- (c) Upon receiving duplicate originals of articles or a statement and upon payment of the prescribed fees, the Registrar shall, if he finds that they conform to law,
 - (i) endorse on each of the duplicate originals the word “Filed” and the date of the filing,
 - (ii) issue in duplicate the appropriate certificate in prescribed form and affix to each certificate one of the duplicate originals of the articles or statement,
 - (iii) file a copy of the certificate and affixed articles or statement,
 - (iv) send to the corporation or its representative the original certificate and affixed articles or statement, and
 - (v) publish by one insertion in the Canada Gazette notice of the issue of the certificate.

20.11

Alteration

¶ 510

The Registrar may alter a notice or document if so authorized by the person who sent the document or by his representative.

20.12

- | | |
|--|-------------------------------|
| (1) If a certificate containing an error is issued to a corporation by the Registrar, the directors or shareholders of the corporation shall, upon the request of the Registrar, pass the resolutions and send to him the documents required to comply with this Act, and the Registrar may demand the surrender of the certificate and issue a corrected certificate. | Corrections ¶ 511 |
| (2) A certificate corrected under subsection (1) is deemed to bear the date of the certificate it replaces. | Date of corrected certificate |
| (3) If a corrected certificate issued under subsection (1) materially amends the terms of the original certificate, the Registrar shall forthwith give notice of the correction by one insertion in the Canada Gazette. | Notice |

20.13

- | | |
|--|---------------------|
| (1) Upon payment of the prescribed fees, any person is entitled during usual business hours to examine a document required by this Act or the regulations to be sent to the Registrar and to make copies of or extracts therefrom. | Inspection ¶ 512 |
| (2) Upon payment of the prescribed fees, the Registrar shall furnish any person with a copy or a certified copy of a document required by this Act or the regulations to be sent to the Registrar. | Copies |

20.14

| | |
|--|---------------------------------|
| The Registrar is not liable to produce any document, other than a certificate and affixed articles or statement filed under section 20.10, after 6 years from the date he receives it. | Destruction of records ¶ 513 |
|--|---------------------------------|

20.15

- | | |
|---|-------------------------------------|
| (1) A body corporate to which Part I of the Canada Corporations Act applies shall apply for a certificate of continuance under section 14.14 within 3 years after this Act comes into force. | Mandatory continuance ¶ 514, 515 |
| (2) The Governor in Council may prescribe by regulation that a body corporate incorporated under an act of the Parliament of Canada and to which the Canada Corporations Act does not apply shall apply for a certificate of continuance under section 14.14. | Discretionary continuance ¶ 516 |
| (3) A body corporate required to obtain a certificate of continuance under subsection (1) or (2) is not required to pay any fees otherwise payable under this Act in respect of such continuance. | Fees ¶ 517 |

Constructive
dissolution

¶ 517

- (4) A body corporate referred to in subsection (1) that does not apply for a certificate of continuance within the period specified in that subsection is deemed dissolved upon the expiry of that period.

Effective
date

20.16

This Act shall come into force on a day to be fixed by proclamation of the Governor in Council.

